

By Senator Hays

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1                                   A bill to be entitled  
2           An act relating to the Office of Financial Regulation  
3           of the Financial Services Commission; amending s.  
4           215.37, F.S.; providing for the deposit of certain  
5           fees, charges, and fines relating to loan originators  
6           and mortgage brokers into the Professional Regulation  
7           Trust Fund of the Department of Business and  
8           Professional Regulation; providing for a type two  
9           transfer of the administration of ch. 494, F.S.,  
10          relating to loan originators and mortgage brokers,  
11          from the Office of Financial Regulation of the  
12          Financial Services Commission to the Department of  
13          Business and Professional Regulation; amending ss.  
14          494.001, 494.0011, 494.0012, 494.00125, 494.0013,  
15          494.00135, 494.0014, 494.0016, 494.00165, 494.00172,  
16          494.00173, 494.0023, 494.0025, 494.00255, 494.0028,  
17          494.00296, 494.00312, 494.00313, 494.00321, 494.00322,  
18          494.00331, 494.0035, 494.0036, 494.0038, 494.004,  
19          494.00421, 494.00611, 494.00612, 494.0063, 494.0066,  
20          494.00665, 494.0067, 494.0069, 494.00721, 494.0076,  
21          494.0079, 494.00795, and 494.00797, F.S.; conforming  
22          terminology and making technical and grammatical  
23          changes; amending s. 516.01, F.S.; deleting the  
24          definitions of the terms "commission," "office,"  
25          "license," "licensee," and "control person" and  
26          defining the term "lender"; amending s. 516.02, F.S.;  
27          deleting a prohibition against engaging in the  
28          business of making consumer finance loans unless the  
29          person is licensed and otherwise authorized to make

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30 such loans; prohibiting a pawnbroker from making loans  
31 under ch. 516, F.S.; making technical and grammatical  
32 changes; repealing s. 516.03, F.S., relating to  
33 procedures for applying for a license to make consumer  
34 finance loans; amending ss. 516.031 and 516.035, F.S.;  
35 conforming terminology and making technical and  
36 grammatical changes; repealing s. 516.05, F.S.,  
37 relating to procedures to apply for, to renew, or to  
38 reactivate a license to make consumer finance loans;  
39 repealing s. 516.07, F.S., relating to grounds for the  
40 denial of a license to make consumer finance loans or  
41 grounds for disciplinary action; repealing s. 516.11,  
42 F.S., relating to the authority of the Office of  
43 Financial Regulation to make investigations and  
44 examinations relating to consumer finance loans;  
45 repealing s. 516.12, F.S., relating to a requirement  
46 that a person who is licensed to make consumer finance  
47 loans maintain books, accounts, and records; amending  
48 ss. 516.15 and 516.16, F.S.; conforming terminology  
49 and making technical and grammatical changes; amending  
50 s. 516.19, F.S.; conforming a penalty provision;  
51 amending s. 516.21, F.S.; conforming terminology and  
52 making technical and grammatical changes; repealing s.  
53 516.22, F.S., relating to the authority of the  
54 Financial Services Commission to adopt rules and  
55 furnish certified copies of a license, regulation, or  
56 order; repealing s. 516.221, F.S., relating to the  
57 liability of a person who in good faith relies on an  
58 order, declaratory statement, or rule issued by the

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59 Office of Financial Regulation or the Financial  
60 Services Commission; repealing s. 516.23, F.S.,  
61 relating to the authority of the Office of Financial  
62 Regulation to issue subpoenas, bring enforcement  
63 actions, and adopt rules; repealing s. 516.27, F.S.,  
64 relating to preexisting contracts; amending s. 516.31,  
65 F.S.; deleting a provision that requires a purchaser  
66 of retail installment contracts to be licensed under  
67 ch. 520, F.S.; making technical and grammatical  
68 changes; repealing s. 516.32, F.S., relating to a  
69 requirement that the Office of Financial Regulation  
70 promote a consumer credit counseling service; creating  
71 s. 516.38, F.S.; authorizing a borrower under a  
72 consumer finance loan to bring an action to recover  
73 damages, including punitive damages, attorney fees,  
74 and costs; amending s. 520.02, F.S.; deleting the  
75 definitions of "branch," "commission," "control  
76 person," "office," "person," and "principal place of  
77 business"; making technical and grammatical changes;  
78 repealing s. 520.03, F.S., relating to a requirement  
79 that a person engaging in the business of a motor  
80 vehicle retail installment seller have a license;  
81 amending s. 520.12, F.S.; deleting provisions  
82 subjecting a person to criminal penalties for engaging  
83 in specified acts or in the business of a retail  
84 installment seller without a license; making technical  
85 and grammatical changes; deleting an exception to a  
86 violation of the requirement that a seller deliver or  
87 mail to the buyer a copy of the contract; amending s.

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88 520.31, F.S.; deleting definitions for the terms  
89 "branch," "commission," "control person," "office,"  
90 and "principal place of business"; repealing s.  
91 520.32, F.S., relating to a requirement that a person  
92 engaging in the business of a retail seller engaging  
93 in the business of retail installment contracts be  
94 licensed by the Office of Financial Regulation;  
95 amending s. 520.34, F.S.; deleting a reference to the  
96 Financial Services Commission; deleting provisions  
97 limiting the application of requirements for retail  
98 installment contracts; making technical and  
99 grammatical changes; amending s. 520.39, F.S.;  
100 deleting a provision that subjects a person to  
101 criminal penalties for engaging in specified acts or  
102 for engaging in the business of a retail seller  
103 engaging in retail installment transactions without a  
104 license; making technical and grammatical changes;  
105 repealing s. 520.41, F.S., relating to the application  
106 of certain provisions of ch. 520, F.S., to contracts  
107 or accounts in effect before a certain date; repealing  
108 s. 520.52, F.S., relating to a requirement that a  
109 person engaging in the business of a sales finance  
110 company or operating a branch office of a sales  
111 finance company be licensed by the Office of Financial  
112 Regulation; amending s. 520.57, F.S.; deleting a  
113 provision that subjects a person to criminal penalties  
114 for engaging in specified acts or in the business of a  
115 sales finance company without a license; making  
116 technical and grammatical changes; amending s. 520.61,

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117 F.S.; deleting the definitions of the terms "branch,"  
118 "commission," "control person," and "office"; making  
119 technical and grammatical changes; repealing s.  
120 520.63, F.S., relating to a requirement that a person  
121 who engages in or transacts business as a home  
122 improvement finance seller be licensed by the Office  
123 of Financial Regulation; repealing s. 520.68, F.S.,  
124 relating to exceptions to requirements for a person to  
125 have a home improvement finance seller's license;  
126 repealing s. 520.69, F.S., relating to a requirement  
127 that a person engaged in the home improvement business  
128 have a license; amending s. 520.76, F.S.; deleting a  
129 reference to the Financial Services Commission; making  
130 technical and grammatical changes; amending s. 520.81,  
131 F.S.; deleting a requirement that the Financial  
132 Services Commission prescribe the form of a  
133 certificate of completion of a home improvement;  
134 amending s. 520.98, F.S.; deleting a provision that  
135 subjects a person to criminal penalties for engaging  
136 in specified acts or for engaging in the business of a  
137 home improvement finance seller or a sales finance  
138 company without a license; making technical and  
139 grammatical changes; repealing part V of ch. 520,  
140 F.S., relating to the regulation of sales and finance  
141 by the Office of Financial Regulation; providing for a  
142 type two transfer of the administration of ch. 537,  
143 F.S., relating to title loans, from the Office of  
144 Financial Regulation of the Financial Services  
145 Commission to the Department of Business and

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146 Professional Regulation; amending ss. 537.001 and  
147 537.002, F.S.; conforming terminology and making  
148 technical and grammatical changes; amending s.  
149 537.003, F.S.; deleting the definitions of the terms  
150 "commission" and "office" and defining the term  
151 "department" to mean the Department of Business and  
152 Professional Regulation; amending s. 537.004, F.S.;  
153 conforming terminology; deleting a requirement that  
154 certain funds relating to the regulation of title  
155 loans be deposited in the Regulator Trust Fund of the  
156 Office of Financial Regulation; amending ss. 537.005  
157 and 537.006, F.S.; conforming terminology; amending  
158 ss. 537.008, 537.009, 537.011, 537.012, 537.013,  
159 537.015, 537.016, and 537.017, F.S.; conforming  
160 terminology; repealing part V of ch. 559, F.S.,  
161 relating to commercial collection; providing for a  
162 type two transfer of the administration of part VI of  
163 ch. 559, F.S., relating to consumer collection  
164 practices, from the Office of Financial Regulation of  
165 the Financial Services Commission to the Department of  
166 Business and Professional Regulation; amending ss.  
167 559.55, 559.553, 559.555, 559.5556, 559.563, 559.565,  
168 559.725, 559.726, 559.727, 559.730, and 559.785, F.S.;  
169 conforming terminology and cross-references; making  
170 technical and grammatical changes; amending s. 687.14,  
171 F.S.; deleting the definitions of the terms  
172 "commission" and "office"; repealing s. 687.144, F.S.,  
173 relating to the authority of the Office of Financial  
174 Regulation to make investigations and examinations and

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175 issue subpoenas relating to interest, usury, and  
176 lending practices; repealing s. 687.145, F.S.,  
177 relating to the authority of the Office of Financial  
178 Regulation to bring actions to enjoin acts in  
179 violation of certain laws regulating interest, usury,  
180 and lending practices; repealing s. 687.148, F.S.,  
181 relating to requirements for the Office of Financial  
182 Regulation to administer and enforce ch. 687, F.S.;  
183 amending ss. 17.20, 20.165, 28.246, 205.1971, 402.33,  
184 501.604, 501.976, 520.13, 560.309, 560.406, 634.271,  
185 681.102, 687.12, 697.05, 721.11, 832.10, and 938.35,  
186 F.S.; conforming cross-references to changes made by  
187 the act; making technical and grammatical changes;  
188 providing an effective date.

189

190 Be It Enacted by the Legislature of the State of Florida:

191

192 Section 1. Section 215.37, Florida Statutes, is amended to  
193 read:

194 215.37 Department of Business and Professional Regulation  
195 and the boards to be financed from fees collected; deposit of  
196 funds; service charge; appropriation.—

197 (1) All fees, licenses, and other charges assessed to  
198 practitioners of professions, as defined in chapter 455, by the  
199 Department of Business and Professional Regulation or a board  
200 within the department shall be collected by the department and  
201 shall be deposited in the State Treasury into the Professional  
202 Regulation Trust Fund to the credit of the department.

203 (2) The regulation of professions as defined in s. 455.01

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204 by the department shall be financed solely from revenue  
205 collected by it from fees and other charges and deposited in the  
206 Professional Regulation Trust Fund, and all such revenue is  
207 hereby appropriated to the department. However, it is  
208 legislative intent that each profession shall operate within its  
209 anticipated fees.

210 (3) The department shall be charged a service charge  
211 pursuant to chapter 215 on funds deposited in the Professional  
212 Regulation Trust Fund.

213 (4) The department shall submit a balanced legislative  
214 budget for its regulation of professions, as defined in chapter  
215 455, by division and operating budgets as required of all  
216 governmental subdivisions in chapters 215 and 216, to be based  
217 upon anticipated revenues. Prior to development of the  
218 department's budget request to the Legislature, the department  
219 shall request that each board submit its proposed budget for the  
220 operation of the board, the board's office, and other activities  
221 or expanded programs of the board for possible inclusion in the  
222 department's budget request. Prior to submission of the  
223 department's budget request to the Legislature, each board, at a  
224 regularly scheduled board meeting, shall review the proposed  
225 request related to its regulation of a profession, as defined in  
226 chapter 455, and either approve the proposed request or submit  
227 to the secretary written exceptions to the department's proposed  
228 budget. Any board making such exceptions must specify its  
229 objections, the reasons for such exceptions, and proposed  
230 alternatives to the department's request. The secretary shall  
231 consider all exceptions. When a majority of boards agree on an  
232 exception, the secretary shall make adjustments to the



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233 department's budget request related to its regulation of  
234 professions, as defined in chapter 455, to reflect the majority  
235 position. If appropriate, the secretary shall file an exception  
236 on behalf of the department. The secretary shall submit to the  
237 Legislature the department's amended budget request along with  
238 any unresolved exceptions.

239 (5) The department shall maintain separate accounts in the  
240 Professional Regulation Trust Fund, as provided in s. 455.219,  
241 for every profession within the department.

242 (6) The department shall maintain a separate account in the  
243 Professional Regulation Trust Fund to receive all fees, charges,  
244 and fines collected pursuant to ss. 494.001-494.0077, except as  
245 provided in s. 494.00172.

246 Section 2. All of the powers, duties, functions, records,  
247 personnel, and property; unexpended balances of appropriations,  
248 allocations, and other funds; administrative authority;  
249 administrative rules; pending issues; and existing contracts of  
250 the Office of Financial Regulation of the Financial Services  
251 Commission for the administration of chapter 494, Florida  
252 Statutes, relating to loan originators and mortgage brokers, are  
253 transferred by a type two transfer, pursuant to s. 20.06(2),  
254 Florida Statutes, to the Department of Business and Professional  
255 Regulation.

256 Section 3. Section 494.001, Florida Statutes, is amended to  
257 read:

258 494.001 Definitions.—As used in ss. 494.001-494.0077, the  
259 term:

260 (1) "Borrower" means a person obligated to repay a mortgage  
261 loan and includes, but is not limited to, a coborrower or

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262 cosignor.

263 (2) "Branch manager" means the licensed loan originator in  
264 charge of, and responsible for, the operation of the branch  
265 office of a mortgage broker or mortgage lender.

266 (3) "Branch office" means a location, other than a mortgage  
267 broker's or mortgage lender's principal place of business:

268 (a) The address of which appears on business cards,  
269 stationery, or advertising used by the licensee in connection  
270 with business conducted under this chapter;

271 (b) At which the licensee's name, advertising or  
272 promotional materials, or signage suggests that mortgage loans  
273 are originated, negotiated, funded, or serviced; or

274 (c) At which mortgage loans are originated, negotiated,  
275 funded, or serviced by a licensee.

276 ~~(4) "Commission" means the Financial Services Commission.~~

277 (4)~~(5)~~ "Contract loan processor" means an individual who is  
278 licensed under part II of this chapter as a loan originator, who  
279 is an independent contractor for a mortgage broker or mortgage  
280 lender, and who engages only in loan processing.

281 (5)~~(6)~~ "Control person" means an individual, partnership,  
282 corporation, trust, or other organization that possesses the  
283 power, directly or indirectly, to direct the management or  
284 policies of a company, whether through ownership of securities,  
285 by contract, or otherwise. The term includes, but is not limited  
286 to:

287 (a) A company's executive officers, including the  
288 president, chief executive officer, chief financial officer,  
289 chief operations officer, chief legal officer, chief compliance  
290 officer, director, and other individuals having similar status

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291 or functions.

292 (b) For a corporation, each shareholder that, directly or  
293 indirectly, owns 10 percent or more or that has the power to  
294 vote 10 percent or more, of a class of voting securities unless  
295 the applicant is a publicly traded company.

296 (c) For a partnership, all general partners and limited or  
297 special partners that have contributed 10 percent or more or  
298 that have the right to receive, upon dissolution, 10 percent or  
299 more of the partnership's capital.

300 (d) For a trust, each trustee.

301 (e) For a limited liability company, all elected managers  
302 and those members that have contributed 10 percent or more or  
303 that have the right to receive, upon dissolution, 10 percent or  
304 more of the partnership's capital.

305 (f) Principal loan originators.

306 (6)~~(7)~~ "Credit report" means any written, oral, or other  
307 information obtained from a consumer reporting agency as  
308 described in the federal Fair Credit Reporting Act, which bears  
309 on an individual's credit worthiness, credit standing, or credit  
310 capacity. A credit score alone, as calculated by the reporting  
311 agency, is not considered a credit report.

312 (7)~~(8)~~ "Credit score" means a score, grade, or value that  
313 is derived by using data from a credit report in any type of  
314 model, method, or program, whether electronically, in an  
315 algorithm, in a computer software or program, or by any other  
316 process for the purpose of grading or ranking credit report  
317 data.

318 (8) "Department" means the Department of Business and  
319 Professional Regulation.

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320 (9) "Depository institution" has the same meaning as in s.  
321 (3) (c) of the Federal Deposit Insurance Act, and includes any  
322 credit union.

323 (10) "Financial audit report" means a report prepared in  
324 connection with a financial audit that is conducted in  
325 accordance with generally accepted auditing standards prescribed  
326 by the American Institute of Certified Public Accountants by a  
327 certified public accountant licensed to do business in the  
328 United States, and which must include:

329 (a) Financial statements, including notes related to the  
330 financial statements and required supplementary information,  
331 prepared in conformity with United States generally accepted  
332 accounting principles.

333 (b) An expression of opinion regarding whether the  
334 financial statements are presented in conformity with United  
335 States generally accepted accounting principles, or an assertion  
336 to the effect that such an opinion cannot be expressed and the  
337 reasons.

338 (11) "In-house loan processor" means an individual who is  
339 an employee of a mortgage broker or a mortgage lender who  
340 engages only in loan processing.

341 (12) "Institutional investor" means a depository  
342 institution, real estate investment trust, insurance company,  
343 real estate company, accredited investor as defined in 17 C.F.R.  
344 ss. 230.501 et seq., mortgage broker or mortgage lender licensed  
345 under this chapter, or other business entity that invests in  
346 mortgage loans, including a secondary mortgage market  
347 institution including, without limitation, the Federal National  
348 Mortgage Association, the Federal Home Loan Mortgage

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349 Corporation, and the Government National Mortgage Association,  
350 conduits, investment bankers, and any subsidiary of such  
351 entities.

352 (13) "Loan commitment" or "commitment" means a statement by  
353 the lender setting forth the terms and conditions upon which the  
354 lender is willing to make a particular mortgage loan to a  
355 particular borrower.

356 (14) "Loan modification" means a modification to an  
357 existing loan. The term does not include a refinancing  
358 transaction.

359 (15) "Loan origination fee" means the total compensation  
360 from any source received by a mortgage broker acting as a loan  
361 originator. Any payment for processing mortgage loan  
362 applications must be included in the fee and must be paid to the  
363 mortgage broker.

364 (16) "Loan originator" means an individual who, directly or  
365 indirectly, solicits or offers to solicit a mortgage loan,  
366 accepts or offers to accept an application for a mortgage loan,  
367 negotiates or offers to negotiate the terms or conditions of a  
368 new or existing mortgage loan on behalf of a borrower or lender,  
369 or negotiates or offers to negotiate the sale of an existing  
370 mortgage loan to a noninstitutional investor for compensation or  
371 gain. The term includes an individual who is required to be  
372 licensed as a loan originator under the S.A.F.E. Mortgage  
373 Licensing Act of 2008. The term does not include an employee of  
374 a mortgage broker or mortgage lender whose duties are limited to  
375 physically handling a completed application form or transmitting  
376 a completed application form to a lender on behalf of a  
377 prospective borrower.

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378 (17) "Loan processing" means:

379 (a) Receiving, collecting, distributing, and analyzing  
380 information common for the processing of a mortgage loan; or

381 (b) Communicating with a consumer to obtain information  
382 necessary for the processing of a mortgage loan if such  
383 communication does not include offering or negotiating loan  
384 rates or terms, or counseling consumers about residential  
385 mortgage loan rates or terms.

386 (18) "Lock-in agreement" means an agreement whereby the  
387 lender guarantees for a specified number of days or until a  
388 specified date the availability of a specified rate of interest  
389 or specified formula by which the rate of interest will be  
390 determined or specific number of discount points will be given,  
391 if the loan is approved and closed within the stated period of  
392 time.

393 (19) "Making a mortgage loan" means closing a mortgage loan  
394 in a person's name, advancing funds, offering to advance funds,  
395 or making a commitment to advance funds to an applicant for a  
396 mortgage loan.

397 (20) "Material change" means a change that would be  
398 important to a reasonable borrower in making a borrowing  
399 decision, and includes a change in the interest rate previously  
400 offered a borrower, a change in the type of loan offered to a  
401 borrower, or a change in fees to be charged to a borrower  
402 resulting in total fees greater than \$100.

403 (21) "Mortgage broker" means a person conducting loan  
404 originator activities through one or more licensed loan  
405 originators employed by the mortgage broker or as independent  
406 contractors to the mortgage broker.

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407 (22) "Mortgage lender" means a person making a mortgage  
408 loan or servicing a mortgage loan for others, or, for  
409 compensation or gain, directly or indirectly, selling or  
410 offering to sell a mortgage loan to a noninstitutional investor.

411 (23) "Mortgage loan" means any:

412 (a) Residential loan primarily for personal, family, or  
413 household use which is secured by a mortgage, deed of trust, or  
414 other equivalent consensual security interest on a dwelling, as  
415 defined in s. 103(v) of the federal Truth in Lending Act, or for  
416 the purchase of residential real estate upon which a dwelling is  
417 to be constructed;

418 (b) Loan on commercial real property if the borrower is an  
419 individual or the lender is a noninstitutional investor; or

420 (c) Loan on improved real property consisting of five or  
421 more dwelling units if the borrower is an individual or the  
422 lender is a noninstitutional investor.

423 (24) "Mortgage loan application" means the submission of a  
424 borrower's financial information in anticipation of a credit  
425 decision, which includes the borrower's name, the borrower's  
426 monthly income, the borrower's social security number to obtain  
427 a credit report, the property address, an estimate of the value  
428 of the property, the mortgage loan amount sought, and any other  
429 information deemed necessary by the loan originator. An  
430 application may be in writing or electronically submitted,  
431 including a written record of an oral application.

432 (25) "Net worth" means total assets minus total liabilities  
433 pursuant to United States generally accepted accounting  
434 principles.

435 (26) "Noninstitutional investor" means an investor other

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436 than an institutional investor.

437 ~~(27) "Office" means the Office of Financial Regulation.~~

438 (27)~~(28)~~ "Principal loan originator" means the licensed  
439 loan originator in charge of, and responsible for, the operation  
440 of a mortgage lender or mortgage broker, including all of the  
441 activities of the mortgage lender's or mortgage broker's loan  
442 originators, in-house loan processors, and branch managers,  
443 whether employees or independent contractors.

444 (28)~~(29)~~ "Principal place of business" means a mortgage  
445 broker's or mortgage lender's primary business office, the  
446 street address, or physical location that is designated on the  
447 application for licensure or any amendment to such application.

448 (29)~~(30)~~ "Registered loan originator" means a loan  
449 originator who is employed by a depository institution, by a  
450 subsidiary that is owned and controlled by a depository  
451 institution and regulated by a federal banking agency, or by an  
452 institution regulated by the Farm Credit Administration, and who  
453 is registered with and maintains a unique identifier through the  
454 registry.

455 (30)~~(31)~~ "Registry" means the Nationwide Mortgage Licensing  
456 System and Registry, which is the mortgage licensing system  
457 developed and maintained by the Conference of State Bank  
458 Supervisors and the American Association of Residential Mortgage  
459 Regulators for the licensing and registration of loan  
460 originators.

461 (31)~~(32)~~ "Relative" means any of the following, whether by  
462 the full or half blood or by adoption:

463 (a) A person's spouse, father, mother, children, brothers,  
464 and sisters.



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465 (b) The father, mother, brothers, and sisters of the  
466 person's spouse.

467 (c) The spouses of the person's children, brothers, or  
468 sisters.

469 (32)~~(33)~~ "Servicing endorsement" means authorizing a  
470 mortgage lender to service a loan for more than 4 months.

471 (33)~~(34)~~ "Servicing a mortgage loan" means to receive,  
472 cause to be received, or transferred for another, installment  
473 payments of principal, interest, or other payments pursuant to a  
474 mortgage loan.

475 (34)~~(35)~~ "Substantial fault of the borrower" means that the  
476 borrower:

477 (a) Failed to provide information or documentation required  
478 by the lender or broker in a timely manner;

479 (b) Provided information, in the application or  
480 subsequently, which upon verification proved to be significantly  
481 inaccurate, causing the need for review or further investigation  
482 by the lender or broker;

483 (c) Failed to produce by the date specified by the lender  
484 all documentation specified in the commitment or closing  
485 instructions as being required for closing; or

486 (d) Failed to be ready, willing, or able to close the loan  
487 by the date specified by the lender or broker.

488  
489 For purposes of this definition, a borrower is considered to  
490 have provided information or documentation in a timely manner if  
491 such information and documentation was received by the lender  
492 within 7 days after the borrower received a request for same,  
493 and information is considered significantly inaccurate if the

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494 correct information materially affects the eligibility of the  
495 borrower for the loan for which application is made.

496 (35)~~(36)~~ "Ultimate equitable owner" means an individual  
497 who, directly or indirectly, owns or controls an ownership  
498 interest in a corporation, a foreign corporation, an alien  
499 business organization, or any other form of business  
500 organization, regardless of whether the individual owns or  
501 controls such interest through one or more individuals or one or  
502 more proxies, powers of attorney, nominees, corporations,  
503 associations, partnerships, trusts, joint stock companies, or  
504 other entities or devices, or any combination thereof.

505 Section 4. Section 494.0011, Florida Statutes, is amended  
506 to read:

507 494.0011 Powers and duties of the department ~~commission and~~  
508 ~~office.~~

509 (1) The department ~~office~~ shall be responsible for the  
510 administration and enforcement of ss. 494.001-494.0077.

511 (2) The department ~~commission~~ may adopt rules to administer  
512 parts I, II, and III of this chapter, including rules:

513 (a) Requiring electronic submission of any forms,  
514 documents, or fees required by this act.

515 (b) Relating to compliance with the S.A.F.E. Mortgage  
516 Licensing Act of 2008, including rules to:

517 1. Require loan originators, mortgage brokers, mortgage  
518 lenders, and branch offices to register through the registry.

519 2. Require the use of uniform forms that have been approved  
520 by the registry, and any subsequent amendments to such forms if  
521 the forms are substantially in compliance with the provisions of  
522 this chapter. Uniform forms that the department ~~commission~~ may

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- 523 adopt include, but are not limited to:
- 524       a. Uniform Mortgage Lender/Mortgage Broker Form, MU1.
- 525       b. Uniform Mortgage Biographical Statement & Consent Form,
- 526 MU2.
- 527       c. Uniform Mortgage Branch Office Form, MU3.
- 528       d. Uniform Individual Mortgage License/Registration &
- 529 Consent Form, MU4.
- 530       3. Require the filing of forms, documents, and fees in
- 531 accordance with the requirements of the registry.
- 532       4. Prescribe requirements for amending or surrendering a
- 533 license or other activities as the department ~~commission~~ deems
- 534 necessary for the department's ~~office's~~ participation in the
- 535 registry.
- 536       5. Prescribe procedures that allow a licensee to challenge
- 537 information contained in the registry.
- 538       6. Prescribe procedures for reporting violations of this
- 539 chapter and disciplinary actions on licensees to the registry.
- 540       (c) Establishing time periods during which a loan
- 541 originator, mortgage broker, or mortgage lender license
- 542 applicant under part II or part III is barred from licensure due
- 543 to prior criminal convictions of, or guilty or nolo contendere
- 544 pleas by, any of the applicant's control persons, regardless of
- 545 adjudication.
- 546       1. The rules must provide:
- 547       a. Permanent bars for felonies involving fraud, dishonesty,
- 548 breach of trust, or money laundering;
- 549       b. A 15-year disqualifying period for felonies involving
- 550 moral turpitude;
- 551       c. A 7-year disqualifying period for all other felonies;

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552 and

553 d. A 5-year disqualifying period for misdemeanors involving  
554 fraud, dishonesty, or any other act of moral turpitude.

555 2. The rules may provide for an additional waiting period  
556 due to dates of imprisonment or community supervision, the  
557 commitment of multiple crimes, and other factors reasonably  
558 related to the applicant's criminal history.

559 3. The rules may provide for mitigating factors for crimes  
560 identified in sub-subparagraph 1.b. However, the mitigation may  
561 not result in a period of disqualification less than 7 years.  
562 The rule may not mitigate the disqualifying periods in sub-  
563 subparagraphs 1.a., 1.c., and 1.d.

564 4. An applicant is not eligible for licensure until the  
565 expiration of the disqualifying period set by rule.

566 5. Section 112.011 is not applicable to eligibility for  
567 licensure under this part.

568 (3) Except as provided in s. 494.00172, all fees, charges,  
569 and fines collected pursuant to ss. 494.001-494.0077 shall be  
570 deposited in the Professional Regulation ~~Regulatory~~ Trust Fund  
571 of the department ~~office~~.

572 (4) The department ~~office~~ shall participate in the registry  
573 and shall regularly report to the registry violations of this  
574 chapter, disciplinary actions, and other information deemed  
575 relevant by the department ~~office~~ under this chapter.

576 Section 5. Section 494.0012, Florida Statutes, is amended  
577 to read:

578 494.0012 Investigations; complaints; examinations.—

579 (1) The department ~~office~~ may conduct an investigation of  
580 any person whenever the department ~~office~~ has reason to believe,

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581 either upon complaint or otherwise, that any violation of ss.  
582 494.001-494.0077 has been committed or is about to be committed.

583 (2) Any person having reason to believe that a provision of  
584 this act has been violated may file a written complaint with the  
585 department office setting forth details of the alleged  
586 violation.

587 (3) (a) The department office may, at intermittent periods,  
588 conduct examinations of any licensee or other person under the  
589 provisions of ss. 494.001-494.0077.

590 (b) The department office shall conduct all examinations at  
591 a convenient location in this state unless the department office  
592 determines that it is more effective or cost-efficient to  
593 perform an examination at the licensee's out-of-state location.  
594 For an examination performed at the licensee's out-of-state  
595 location, the licensee shall pay the travel expense and per diem  
596 subsistence at the rate provided by law for up to thirty 8-hour  
597 days per year for each department office examiner who  
598 participates in such an examination. However, if the examination  
599 involves or reveals fraudulent conduct by the licensee, the  
600 licensee shall pay the travel expense and per diem subsistence  
601 provided by law, without limitation, for each participating  
602 examiner.

603 Section 6. Section 494.00125, Florida Statutes, is amended  
604 to read:

605 494.00125 Public records exemptions.—

606 (1) INVESTIGATIONS OR EXAMINATIONS.—

607 (a) Except as otherwise provided by this subsection,  
608 information relative to an investigation or examination by the  
609 department office pursuant to this chapter, including any

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610 consumer complaint received by the department ~~office~~ or the  
611 Department of Financial Services, is confidential and exempt  
612 from s. 119.07(1) until the investigation or examination is  
613 completed or ceases to be active. For purposes of this  
614 subsection, an investigation or examination is considered active  
615 if the department ~~office~~ or any law enforcement or  
616 administrative agency is proceeding with reasonable dispatch and  
617 has a reasonable good faith belief that the investigation or  
618 examination may lead to the filing of an administrative, civil,  
619 or criminal proceeding or to the denial or conditional grant of  
620 a license.

621 (b) This subsection does not prohibit the disclosure of  
622 information that is filed with the department ~~office~~ as a normal  
623 condition of licensure and that ~~which~~, but for the investigation  
624 or examination, would be subject to s. 119.07(1).

625 (c) Except as necessary for the department ~~office~~ to  
626 enforce the provisions of this chapter, a consumer complaint and  
627 other information relative to an investigation or examination  
628 shall remain confidential and exempt from s. 119.07(1) after the  
629 investigation or examination is completed or ceases to be active  
630 to the extent disclosure would:

631 1. Jeopardize the integrity of another active investigation  
632 or examination.

633 2. Reveal the name, address, telephone number, social  
634 security number, or any other identifying number or information  
635 of any complainant, customer, or account holder.

636 3. Disclose the identity of a confidential source.

637 4. Disclose investigative techniques or procedures.

638 5. Reveal a trade secret as defined in s. 688.002.

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639 (d) If department ~~office~~ personnel are or have been  
640 involved in an investigation or examination of such nature as to  
641 endanger their lives or physical safety or that of their  
642 families, the home addresses, telephone numbers, places of  
643 employment, and photographs of such personnel, together with the  
644 home addresses, telephone numbers, photographs, and places of  
645 employment of spouses and children of such personnel and the  
646 names and locations of schools and day care facilities attended  
647 by the children of such personnel are confidential and exempt  
648 from s. 119.07(1).

649 (e) This subsection does not prohibit the department  
650 ~~office~~ from providing confidential and exempt information to any  
651 law enforcement or administrative agency. Any law enforcement or  
652 administrative agency receiving confidential and exempt  
653 information in connection with its official duties shall  
654 maintain the confidentiality of the information if it would  
655 otherwise be confidential.

656 (f) All information obtained by the department ~~office~~ from  
657 any person which is only made available to the department ~~office~~  
658 on a confidential or similarly restricted basis shall be  
659 confidential and exempt from s. 119.07(1).

660 (g) If information subject to this subsection is offered in  
661 evidence in any administrative, civil, or criminal proceeding,  
662 the presiding officer may prevent the disclosure of information  
663 that would be confidential pursuant to paragraph (c).

664 (h) A privilege against civil liability is granted to a  
665 person who furnishes information or evidence to the department  
666 ~~office~~, unless such person acts in bad faith or with malice in  
667 providing such information or evidence.

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668 (2) FINANCIAL STATEMENTS.—All audited financial statements  
669 submitted pursuant to ss. 494.001-494.0077 are confidential and  
670 exempt from the requirements of s. 119.07(1), except that ~~office~~  
671 employees may have access to such information in the  
672 administration and enforcement of ss. 494.001-494.0077 and such  
673 information may be used by department ~~office~~ personnel in the  
674 prosecution of violations under ss. 494.001-494.0077.

675 (3) CREDIT INFORMATION.—

676 (a) Credit history information and credit scores held by  
677 the department ~~office~~ and related to licensing under ss.  
678 494.001-494.0077 are confidential and exempt from s. 119.07(1)  
679 and s. 24(a), Art. I of the State Constitution.

680 (b) Credit history information and credit scores made  
681 confidential and exempt pursuant to paragraph (a) may be  
682 provided by the department ~~office~~ to another governmental entity  
683 having oversight or regulatory or law enforcement authority.

684 (c) This subsection does not apply to information that is  
685 otherwise publicly available.

686 (d) This subsection is subject to the Open Government  
687 Sunset Review Act in accordance with s. 119.15 and shall stand  
688 repealed on October 2, 2015, unless reviewed and saved from  
689 repeal through reenactment by the Legislature.

690 Section 7. Section 494.0013, Florida Statutes, is amended  
691 to read:

692 494.0013 Injunction to restrain violations.—

693 (1) The department ~~office~~ may bring action through its own  
694 counsel in the name and on behalf of the state against any  
695 person who has violated or is about to violate any provision of  
696 ss. 494.001-494.0077 or any rule of the department ~~commission~~ or



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697 order of the department ~~office~~ issued under ss. 494.001-494.0077  
698 to enjoin the person from continuing in or engaging in any act  
699 in furtherance of the violation.

700 (2) In any injunctive proceeding, the court may, on due  
701 showing by the department ~~office~~, issue a subpoena or subpoena  
702 duces tecum requiring the attendance of any witness and  
703 requiring the production of any books, accounts, records, or  
704 other documents and materials that appear necessary to the  
705 expeditious resolution of the application for injunction.

706 (3) In addition to all other means provided by law for the  
707 enforcement of any temporary restraining order, temporary  
708 injunction, or permanent injunction issued in any such court  
709 proceeding, the court has the power and jurisdiction, upon  
710 application of the department ~~office~~, to impound, and to appoint  
711 a receiver or administrator for, the property, assets, and  
712 business of the defendant, including, but not limited to, the  
713 books, records, documents, and papers appertaining thereto. Such  
714 receiver or administrator, when appointed and qualified, has all  
715 powers and duties as to custody, collection, administration,  
716 winding up, and liquidation of the property and business as are  
717 from time to time conferred upon him or her by the court. In any  
718 such action, the court may issue an order staying all pending  
719 suits and enjoining any further suits affecting the receiver's  
720 or administrator's custody or possession of the property,  
721 assets, and business, or the court, in its discretion and with  
722 the consent of the chief judge of the circuit, may require that  
723 all such suits be assigned to the circuit court judge who  
724 appoints the receiver or administrator.

725 Section 8. Section 494.00135, Florida Statutes, is amended

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726 to read:

727 494.00135 Subpoenas.—

728 (1) The department ~~office~~ may:

729 (a) Issue and serve subpoenas and subpoenas duces tecum to  
730 compel the attendance of witnesses and the production of all  
731 books, accounts, records, and other documents and materials  
732 relevant to an examination or investigation conducted by the  
733 department ~~office~~. The department ~~office~~, or its authorized  
734 representative, may administer oaths and affirmations to any  
735 person.

736 (b) Seek subpoenas or subpoenas duces tecum from any court  
737 to command the appearance of witnesses and the production of  
738 books, accounts, records, and other documents or materials at a  
739 time and place named in the subpoenas, and an authorized  
740 representative of the department ~~office~~ may serve such  
741 subpoenas.

742 (2) If there is substantial noncompliance with a subpoena  
743 or subpoena duces tecum issued by the department ~~office~~, the  
744 department ~~office~~ may petition the court in the county where the  
745 person subpoenaed resides or has his or her principal place of  
746 business for an order requiring the person to appear, testify,  
747 or produce such books, accounts, records, and other documents as  
748 are specified in the subpoena or subpoena duces tecum.

749 (a) The court may grant injunctive relief restraining the  
750 person from advertising, promoting, soliciting, entering into,  
751 offering to enter into, continuing, or completing a mortgage  
752 loan or servicing a mortgage loan.

753 (b) The court may grant such other relief, including, but  
754 not limited to, the restraint, by injunction or appointment of a

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755 receiver, of any transfer, pledge, assignment, or other  
756 disposition of the person's assets or any concealment,  
757 alteration, destruction, or other disposition of books,  
758 accounts, records, or other documents and materials as the court  
759 deems appropriate, until the person has fully complied with the  
760 subpoena duces tecum and the department ~~office~~ has completed its  
761 investigation or examination.

762 (c) The court may order the refund of any fees collected in  
763 a mortgage loan transaction if books and documents  
764 substantiating the transaction are not produced or cannot be  
765 produced.

766 (d) If it appears to the department ~~office~~ that compliance  
767 with a subpoena or subpoena duces tecum issued is essential and  
768 otherwise unavailable to an investigation or examination, the  
769 department ~~office~~ may apply to the court for a writ of ne exeat  
770 pursuant to s. 68.02.

771 (e) The department ~~office~~ may seek a writ of attachment to  
772 obtain all books, accounts, records, and other documents and  
773 materials relevant to an examination or investigation.

774 (3) The department ~~office~~ is entitled to the summary  
775 procedure provided in s. 51.011, and the court shall advance  
776 such cause on its calendar. Attorney ~~Attorney's~~ fees and any  
777 other costs incurred by the department ~~office~~ to obtain an order  
778 granting, in whole or in part, a petition for enforcement of a  
779 subpoena or subpoena duces tecum shall be taxed against the  
780 subpoenaed person, and failure to comply with such order is a  
781 contempt of court.

782 Section 9. Section 494.0014, Florida Statutes, is amended  
783 to read:

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784 494.0014 Cease and desist orders; refund orders.-

785 (1) The department ~~office~~ may issue and serve upon any  
786 person an order to cease and desist and to take corrective  
787 action if it has reason to believe the person is violating, has  
788 violated, or is about to violate any provision of ss. 494.001-  
789 494.0077, any rule or order issued under ss. 494.001-494.0077,  
790 or any written agreement between the person and the department  
791 ~~office~~. All procedural matters relating to issuance and  
792 enforcement of such order are governed by the Administrative  
793 Procedure Act.

794 (2) The department ~~office~~ may order the refund of any fee  
795 directly or indirectly assessed and charged on a mortgage loan  
796 transaction which is unauthorized or exceeds the maximum fee  
797 specifically authorized in ss. 494.001-494.0077, or any amount  
798 collected for the payment of third-party fees which exceeds the  
799 cost of the service provided.

800 Section 10. Section 494.0016, Florida Statutes, is amended  
801 to read:

802 494.0016 Books, accounts, and records; maintenance;  
803 examinations by the department ~~office~~.-

804 (1) Each licensee shall maintain, at the principal place of  
805 business designated on the license, all books, accounts,  
806 records, and documents necessary to determine the licensee's  
807 compliance with ss. 494.001-494.0077.

808 (2) The department ~~office~~ may authorize maintenance of  
809 records at a location other than a principal place of business.  
810 The department ~~office~~ may require books, accounts, and records  
811 to be produced and available at a reasonable and convenient  
812 location in this state.

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813 (3) All books, accounts, records, documents, and receipts  
814 for expenses paid by the licensee on behalf of the borrower,  
815 including each closing statement signed by a borrower, shall be  
816 preserved and kept available for examination by the department  
817 ~~office~~ for at least 3 years after the date of original entry.

818 (4) The department ~~commission~~ may prescribe by rule the  
819 minimum information to be shown in the books, accounts, records,  
820 and documents of licensees so that such records will enable the  
821 department ~~office~~ to determine the licensee's compliance with  
822 ss. 494.001-494.0077. In addition, the department ~~commission~~ may  
823 prescribe by rule requirements for the destruction of books,  
824 accounts, records, and documents retained by the licensee after  
825 completion of the time period specified in subsection (3).

826 Section 11. Subsection (2) of section 494.00165, Florida  
827 Statutes, is amended to read:

828 494.00165 Prohibited advertising; record requirements.—

829 (2) Each person required to be licensed under this chapter  
830 must maintain a record of samples of each of its advertisements,  
831 including commercial scripts of each radio or television  
832 broadcast, for examination by the department ~~office~~ for 2 years  
833 after the date of publication or broadcast.

834 Section 12. Section 494.00172, Florida Statutes, is amended  
835 to read:

836 494.00172 Mortgage Guaranty Trust Fund; payment of fees and  
837 claims.—A nonrefundable fee is imposed on each application for a  
838 mortgage broker, mortgage lender, or loan originator license and  
839 on each annual application for a renewal of such license. For a  
840 loan originator, the initial and renewal fee is \$20. For  
841 mortgage brokers and lenders, the initial and renewal fee is

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842 \$100. This fee is in addition to the regular application or  
843 renewal fee assessed and shall be deposited into the Mortgage  
844 Guaranty Trust Fund of the department ~~office~~ for the payment of  
845 claims in accordance with this section.

846 (1) If the amount in the trust fund exceeds \$5 million, the  
847 additional fee shall be discontinued and may not be reimposed  
848 until the fund is reduced to below \$1 million pursuant to  
849 disbursements made in accordance with this section.

850 (2) A borrower in a mortgage loan transaction is eligible  
851 to seek recovery from the trust fund if all of the following  
852 conditions are met:

853 (a) The borrower has recorded a final judgment issued by a  
854 state court wherein the cause of action against a licensee under  
855 this chapter was based on a violation of this chapter and the  
856 damages were the result of that violation.

857 (b) The borrower has caused a writ of execution to be  
858 issued upon such judgment, and the officer executing the  
859 judgment has made a return showing that no personal or real  
860 property of the judgment debtor liable to be levied upon in  
861 satisfaction of the judgment can be found or that the amount  
862 realized on the sale of the judgment debtor's property pursuant  
863 to such execution is insufficient to satisfy the judgment.

864 (c) The borrower has made all reasonable searches and  
865 inquiries to ascertain whether the judgment debtor possesses  
866 real or personal property or other assets subject to being sold  
867 or applied in satisfaction of the judgment, and has discovered  
868 no such property or assets; or he or she has discovered property  
869 and assets and has taken all necessary action and proceedings  
870 for the application thereof to the judgment, but the amount

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871 realized is insufficient to satisfy the judgment.

872 (d) The borrower has applied any amounts recovered from the  
873 judgment debtor, or from any other source, to the damages  
874 awarded by the court.

875 (e) The borrower, at the time the action was instituted,  
876 gave notice and provided a copy of the complaint to the  
877 department ~~office~~ by certified mail. The requirement of a timely  
878 giving of notice may be waived by the department ~~office~~ upon a  
879 showing of good cause.

880 (f) The act for which recovery is sought occurred on or  
881 after January 1, 2011.

882 (3) The requirements of subsection (2) are not applicable  
883 if the licensee upon which the claim is sought has filed for  
884 bankruptcy or has been adjudicated bankrupt. However, the  
885 claimant must file a proof of claim in the bankruptcy  
886 proceedings and must notify the department ~~office~~ by certified  
887 mail of the claim by enclosing a copy of the proof of claim and  
888 all supporting documents.

889 (4) Any person who meets all of the conditions in  
890 subsection (2) may apply to the department ~~office~~ for payment  
891 from the trust fund equal to the unsatisfied portion of that  
892 person's judgment or \$50,000, whichever is less, but only to the  
893 extent that the amount reflected in the judgment is for actual  
894 or compensatory damages, plus any attorney ~~attorney's~~ fees and  
895 costs awarded by the trial court which have been determined by  
896 the court, and the documented costs associated with attempting  
897 to collect the judgment. Actual or compensatory damages may not  
898 include postjudgment interest. Attorney ~~Attorney's~~ fees may not  
899 exceed \$5,000 or 20 percent of the actual or compensatory

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900 damages, whichever is less. If actual or compensatory damages,  
901 plus attorney ~~attorney's~~ fees and costs, exceed \$50,000, actual  
902 or compensatory damages must be paid first. The cumulative  
903 payment for actual or compensatory damages, plus attorney  
904 ~~attorney's~~ fees and costs, may not exceed \$50,000 as described  
905 in this section.

906 (a) A borrower may not collect more than \$50,000 from the  
907 trust fund for any claim regardless of the number of licensees  
908 liable for the borrower's damages.

909 (b) Payments for claims are limited in the aggregate to  
910 \$250,000 against any one licensee under this chapter. If the  
911 total claims exceed the aggregate limit of \$250,000, the  
912 department ~~office~~ shall prorate payments based on the ratio that  
913 a claim bears to the total claims filed.

914 (c) Payments shall be made to all persons meeting the  
915 requirements of subsection (2) 2 years after the date the first  
916 complete and valid notice is received by the department ~~office~~.  
917 Persons who give notice after 2 years and who otherwise comply  
918 with the conditions precedent to recovery may recover from any  
919 remaining portion of the \$250,000 aggregate as provided in this  
920 subsection, with claims being paid in the order notice was  
921 received until the \$250,000 aggregate has been disbursed.

922 (d) The claimant shall assign his or her right, title, and  
923 interest in the judgment, to the extent of his or her recovery  
924 from the fund, to the department ~~office~~ and shall record, at his  
925 or her own expense, the assignment of judgment in every county  
926 where the judgment is recorded.

927 (e) If the money in the fund is insufficient to satisfy any  
928 valid claim or portion thereof, the department ~~office~~ shall



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929 satisfy such unpaid claim or portion as soon as a sufficient  
930 amount of money has been deposited in the trust fund. If there  
931 is more than one unsatisfied claim outstanding, such claims  
932 shall be paid in the order in which the claims were filed with  
933 the department ~~office~~.

934 (f) The payment of any amount from the fund in settlement  
935 of a claim or in satisfaction of a judgment against a licensee  
936 constitutes prima facie grounds for the revocation of the  
937 license.

938 Section 13. Subsection (1) of section 494.00173, Florida  
939 Statutes, is amended to read:

940 494.00173 Mortgage Guaranty Trust Fund; creation.—

941 (1) The Mortgage Guaranty Trust Fund is created within, and  
942 shall be administered by, the Department of Business and  
943 Professional Regulation ~~Office of Financial Regulation~~.

944 Section 14. Subsection (3) of section 494.0023, Florida  
945 Statutes, is amended to read:

946 494.0023 Conflicting interest.—

947 (3) The department ~~commission~~ may adopt rules to administer  
948 the disclosure requirements of this section. The rules must  
949 consider the disclosure requirements of the federal Real Estate  
950 Settlement Procedures Act, 12 U.S.C. ss. 2601 et seq.; the  
951 federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq.; and  
952 related federal regulations.

953 Section 15. Subsections (1), (2), (3), and (5) of section  
954 494.0025, Florida Statutes, are amended to read:

955 494.0025 Prohibited practices.—It is unlawful for any  
956 person:

957 (1) To act as a loan originator in this state without a

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958 current, active license issued by the department ~~office~~ pursuant  
959 to part II of this chapter.

960 (2) To act as a mortgage broker in this state without a  
961 current, active license issued by the department ~~office~~ pursuant  
962 to part II of this chapter.

963 (3) To act as a mortgage lender in this state without a  
964 current, active license issued by the department ~~office~~ pursuant  
965 to part III of this chapter.

966 (5) In any matter within the jurisdiction of the department  
967 ~~office~~, to knowingly and willfully falsify, conceal, or cover up  
968 by a trick, scheme, or device a material fact, make any false or  
969 fraudulent statement or representation, or make or use any false  
970 writing or document, knowing the same to contain any false or  
971 fraudulent statement or entry.

972 Section 16. Paragraphs (t), (v), and (w) of subsection (1)  
973 and subsections (2), (8), and (9) of section 494.00255, Florida  
974 Statutes, are amended to read:

975 494.00255 Administrative penalties and fines; license  
976 violations.—

977 (1) Each of the following acts constitutes a ground for  
978 which the disciplinary actions specified in subsection (2) may  
979 be taken against a person licensed or required to be licensed  
980 under part II or part III of this chapter:

981 (t) Payment to the department ~~office~~ for a license or  
982 permit with a check or electronic transmission of funds which is  
983 dishonored by the applicant's or licensee's financial  
984 institution.

985 (v) Failure to maintain, preserve, and keep available for  
986 examination all books, accounts, or other documents required by

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987 ss. 494.001-494.0077 and the rules of the department ~~commission~~.

988 (w) Refusal to permit an investigation or examination of  
989 books and records, or refusal to comply with a department ~~an~~  
990 ~~office~~ subpoena or subpoena duces tecum.

991 (2) If the department ~~office~~ finds a person in violation of  
992 any act specified in this section, it may enter an order  
993 imposing one or more of the following penalties:

994 (a) Issuance of a reprimand.

995 (b) Suspension of a license, subject to reinstatement upon  
996 satisfying all reasonable conditions imposed by the department  
997 ~~office~~.

998 (c) Revocation of a license.

999 (d) Denial of a license.

1000 (e) Imposition of a fine in an amount up to \$25,000 for  
1001 each count or separate offense.

1002 (f) An administrative fine of up to \$1,000 per day, but not  
1003 to exceed \$25,000 cumulatively, for each day that:

1004 1. A mortgage broker or mortgage lender conducts business  
1005 at an unlicensed branch office.

1006 2. An unlicensed person acts as a loan originator, a  
1007 mortgage broker, or a mortgage lender.

1008 (8) Pursuant to s. 120.60(6), the department ~~office~~ may  
1009 summarily suspend the license of a loan originator, mortgage  
1010 broker, or mortgage lender if the department ~~office~~ has reason  
1011 to believe that a licensee poses an immediate, serious danger to  
1012 the public's health, safety, or welfare. The arrest of the  
1013 licensee, or the mortgage broker or the mortgage lender's  
1014 control person, for any felony or any crime involving fraud,  
1015 dishonesty, breach of trust, money laundering, or any other act

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1016 of moral turpitude is deemed sufficient to constitute an  
1017 immediate danger to the public's health, safety, or welfare. Any  
1018 proceeding for the summary suspension of a license must be  
1019 conducted by the secretary ~~commissioner~~ of the department  
1020 ~~office~~, or designee, who shall issue the final summary order.

1021 (9) The department ~~office~~ may deny any request to terminate  
1022 or withdraw any license application or license if the department  
1023 ~~office~~ believes that an act that would be a ground for license  
1024 denial, suspension, restriction, or revocation under this  
1025 chapter has been committed.

1026 Section 17. Subsection (3) of section 494.0028, Florida  
1027 Statutes, is amended to read:

1028 494.0028 Arbitration.—

1029 (3) All agreements subject to this section must provide the  
1030 noninstitutional investor or borrower with the option to elect  
1031 arbitration before the American Arbitration Association or other  
1032 independent nonindustry arbitration forum. Any other nonindustry  
1033 arbitration forum may apply to the department ~~office~~ to allow  
1034 such forum to provide arbitration services. The department  
1035 ~~office~~ shall grant the application if the applicant's fees,  
1036 practices, and procedures do not materially differ from those of  
1037 the American Arbitration Association.

1038 Section 18. Subsection (1) of section 494.00296, Florida  
1039 Statutes, is amended to read:

1040 494.00296 Loan modification.—

1041 (1) PROHIBITED ACTS.—When offering or providing loan  
1042 modification services, a loan originator, mortgage broker, or  
1043 mortgage lender may not:

1044 (a) Engage in or initiate loan modification services

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1045 without first executing a written agreement for loan  
1046 modification services with the borrower;

1047 (b) Execute a loan modification without the consent of the  
1048 borrower after the borrower is made aware of each modified term;  
1049 or

1050 (c) Solicit, charge, receive, or attempt to collect or  
1051 secure payment, directly or indirectly, for loan modification  
1052 services before completing or performing all services included  
1053 in the agreement for loan modification services. A fee may be  
1054 charged only if the loan modification results in a material  
1055 benefit to the borrower. The department ~~commission~~ may adopt  
1056 rules to provide guidance on what constitutes a material benefit  
1057 to the borrower.

1058 Section 19. Section 494.00312, Florida Statutes, is amended  
1059 to read:

1060 494.00312 Loan originator license.—

1061 (1) An individual who acts as a loan originator must be  
1062 licensed under this section.

1063 (2) In order to apply for a loan originator license, an  
1064 applicant must:

1065 (a) Be at least 18 years of age and have a high school  
1066 diploma or its equivalent.

1067 (b) Complete a 20-hour prelicensing class approved by the  
1068 registry.

1069 (c) Pass a written test developed by the registry and  
1070 administered by a provider approved by the registry.

1071 (d) Submit a completed license application form as  
1072 prescribed by department ~~commission~~ rule.

1073 (e) Submit a nonrefundable application fee of \$195, and the

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1074 \$20 nonrefundable fee if required by s. 494.00172. Application  
1075 fees may not be prorated for partial years of licensure.

1076 (f) Submit fingerprints in accordance with rules adopted by  
1077 the department ~~commission~~:

1078 1. The fingerprints may be submitted to the registry, the  
1079 department ~~office~~, or a vendor acting on behalf of the registry  
1080 or the department ~~office~~.

1081 2. The department ~~office~~ may contract with a third-party  
1082 vendor to provide live-scan fingerprinting in lieu of a paper  
1083 fingerprint card.

1084 3. A state criminal history background check must be  
1085 conducted through the Department of Law Enforcement, and a  
1086 federal criminal history background check must be conducted  
1087 through the Federal Bureau of Investigation.

1088 4. All fingerprints submitted to the Department of Law  
1089 Enforcement must be submitted electronically and entered into  
1090 the statewide automated fingerprint identification system  
1091 established in s. 943.05(2)(b) and available for use in  
1092 accordance with s. 943.05(2)(g) and (h). The department ~~office~~  
1093 shall pay an annual fee to the Department of Law Enforcement to  
1094 participate in the system and inform the Department of Law  
1095 Enforcement of any person whose fingerprints are no longer  
1096 required to be retained.

1097 5. The costs of fingerprint processing, including the cost  
1098 of retaining the fingerprints, shall be borne by the person  
1099 subject to the background check.

1100 6. The department ~~office~~ is responsible for reviewing the  
1101 results of the state and federal criminal history checks and  
1102 determining whether the applicant meets licensure requirements.

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1103 (g) Authorize the registry to obtain an independent credit  
1104 report on the applicant from a consumer reporting agency, and  
1105 transmit or provide access to the report to the department  
1106 ~~office~~. The cost of the credit report shall be borne by the  
1107 applicant.

1108 (h) Submit additional information or documentation  
1109 requested by the department ~~office~~ and required by rule  
1110 concerning the applicant. Additional information may include  
1111 documentation of pending and prior disciplinary and criminal  
1112 history events, including arrest reports and certified copies of  
1113 charging documents, plea agreements, judgments and sentencing  
1114 documents, documents relating to pretrial intervention, orders  
1115 terminating probation or supervised release, final  
1116 administrative agency orders, or other comparable documents that  
1117 may provide the department ~~office~~ with the appropriate  
1118 information to determine eligibility for licensure.

1119 (i) Submit any other information required by the registry  
1120 for the processing of the application.

1121 (3) An application is considered received for the purposes  
1122 of s. 120.60 upon the department's ~~office's~~ receipt of all  
1123 documentation from the registry, including the completed  
1124 application form, documentation of completion of the  
1125 prelicensure class, test results, criminal history information,  
1126 and independent credit report, as well as the license  
1127 application fee, the fee required by s. 494.00172, and all  
1128 applicable fingerprinting processing fees.

1129 (4) The department ~~office~~ shall issue a loan originator  
1130 license to each person who is not otherwise ineligible and who  
1131 meets the requirements of this section. However, it is a ground

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1132 for denial of licensure if the applicant:

1133 (a) Has committed any violation specified in ss. 494.001-  
1134 494.0077, or is the subject of a pending felony criminal  
1135 prosecution or a prosecution or an administrative enforcement  
1136 action, in any jurisdiction, which involves fraud, dishonesty,  
1137 breach of trust, money laundering, or any other act of moral  
1138 turpitude.

1139 (b) Has failed to demonstrate the character, general  
1140 fitness, and financial responsibility necessary to command the  
1141 confidence of the community and warrant a determination that the  
1142 applicant will operate honestly, fairly, and efficiently.

1143 1. If the department ~~office~~ has information that could form  
1144 the basis for license denial under this paragraph, before  
1145 denying the license, the department ~~office~~ must notify the  
1146 applicant in writing of the specific items of concern and  
1147 provide the applicant with an opportunity to explain the  
1148 circumstances surrounding the specific items and provide any  
1149 information that the applicant believes is relevant to the  
1150 department's ~~office's~~ determination.

1151 2. For purposes of evaluating adverse information found in  
1152 an applicant's credit report, the information must be considered  
1153 within the totality of the circumstances. Information provided  
1154 by the applicant under subparagraph 1., or information obtained  
1155 by the department ~~office~~ by other means, may be used to provide  
1156 a context for the adverse items. For example, the adverse items  
1157 may have resulted from factors that do not necessarily reflect  
1158 negatively upon the applicant's character, general fitness, or  
1159 financial responsibility.

1160 3. The department ~~office~~ may not use a credit score or the



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1161 absence or insufficiency of credit history information to  
1162 determine character, general fitness, or financial  
1163 responsibility.

1164 4. If information contained in a credit report is used as  
1165 the basis for denying a license, the department ~~office~~ shall, in  
1166 accordance with s. 120.60(3), provide with particularity the  
1167 grounds or basis for denial. The use of the terms "poor credit  
1168 history," "poor credit rating," or similar language does not  
1169 meet the requirements of this paragraph.

1170 (5) The department ~~office~~ may not issue a license to an  
1171 applicant who has had a loan originator license or its  
1172 equivalent revoked in any jurisdiction.

1173 (6) A loan originator license shall be annulled pursuant to  
1174 s. 120.60 if it was issued by the department ~~office~~ by mistake.  
1175 A license must be reinstated if the applicant demonstrates that  
1176 the requirements for obtaining the license under this chapter  
1177 have been satisfied.

1178 (7) All loan originator licenses must be renewed annually  
1179 by December 31 pursuant to s. 494.00313. If a person holding an  
1180 active loan originator license has not applied to renew the  
1181 license on or before December 31, the loan originator license  
1182 expires on December 31. If a person holding an active loan  
1183 originator license has applied to renew the license on or before  
1184 December 31, the loan originator license remains active until  
1185 the renewal application is approved or denied. A loan originator  
1186 is not precluded from reapplying for licensure upon expiration  
1187 of a previous license.

1188 Section 20. Section 494.00313, Florida Statutes, is amended  
1189 to read:

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1190 494.00313 Loan originator license renewal.—

1191 (1) In order to renew a loan originator license, a loan  
1192 originator must:

1193 (a) Submit a completed license renewal form as prescribed  
1194 by department ~~commission~~ rule.

1195 (b) Submit a nonrefundable renewal fee of \$150, the \$20  
1196 nonrefundable fee if required by s. 494.00172, and nonrefundable  
1197 fees to cover the cost of further fingerprint processing and  
1198 retention as set forth in department ~~commission~~ rule.

1199 (c) Provide documentation of completion of at least 8 hours  
1200 of continuing education in courses reviewed and approved by the  
1201 registry.

1202 (d) Authorize the registry to obtain an independent credit  
1203 report on the licensee from a consumer reporting agency, and  
1204 transmit or provide access to the report to the department  
1205 ~~office~~. The cost of the credit report shall be borne by the  
1206 licensee.

1207 (e) Submit any additional information or documentation  
1208 requested by the department ~~office~~ and required by rule  
1209 concerning the licensee. Additional information may include  
1210 documentation of pending and prior disciplinary and criminal  
1211 history events, including arrest reports and certified copies of  
1212 charging documents, plea agreements, judgments and sentencing  
1213 documents, documents relating to pretrial intervention, orders  
1214 terminating probation or supervised release, final  
1215 administrative agency orders, or other comparable documents that  
1216 may provide the department ~~office~~ with the appropriate  
1217 information to determine eligibility for renewal of licensure.

1218 (2) The department ~~office~~ may not renew a loan originator

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1219 license unless the loan originator continues to meet the minimum  
1220 requirements for initial licensure pursuant to s. 494.00312 and  
1221 adopted rule.

1222 Section 21. Section 494.00321, Florida Statutes, is amended  
1223 to read:

1224 494.00321 Mortgage broker license.—

1225 (1) Each person who acts as a mortgage broker must be  
1226 licensed in accordance with this section.

1227 (2) In order to apply for a mortgage broker license, an  
1228 applicant must:

1229 (a) Submit a completed license application form as  
1230 prescribed by department ~~commission~~ rule.

1231 (b) Designate a qualified principal loan originator on the  
1232 application form who meets the requirements of s. 494.0035.

1233 (c) Submit a nonrefundable application fee of \$425, and the  
1234 \$100 nonrefundable fee if required by s. 494.00172. Application  
1235 fees may not be prorated for partial years of licensure.

1236 (d) Submit fingerprints for each of the applicant's control  
1237 persons in accordance with rules adopted by the department  
1238 ~~commission~~:

1239 1. The fingerprints may be submitted to the registry, the  
1240 department ~~office~~, or a vendor acting on behalf of the registry  
1241 or the department ~~office~~.

1242 2. The department ~~office~~ may contract with a third-party  
1243 vendor to provide live-scan fingerprinting in lieu of a paper  
1244 fingerprint card.

1245 3. A state criminal history background check must be  
1246 conducted through the Department of Law Enforcement, and a  
1247 federal criminal history background check must be conducted

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1248 through the Federal Bureau of Investigation.

1249 4. All fingerprints submitted to the Department of Law  
1250 Enforcement must be submitted electronically and entered into  
1251 the statewide automated fingerprint identification system  
1252 established in s. 943.05(2)(b) and available for use in  
1253 accordance with s. 943.05(2)(g) and (h). The department ~~office~~  
1254 shall pay an annual fee to the Department of Law Enforcement to  
1255 participate in the system and inform the Department of Law  
1256 Enforcement of any person whose fingerprints are no longer  
1257 required to be retained.

1258 5. The costs of fingerprint processing, including the cost  
1259 of retaining the fingerprints, shall be borne by the person  
1260 subject to the background check.

1261 6. The department ~~office~~ is responsible for reviewing the  
1262 results of the state and federal criminal history checks and  
1263 determining whether the applicant meets licensure requirements.

1264 (e) Authorize the registry to obtain an independent credit  
1265 report on each of the applicant's control persons from a  
1266 consumer reporting agency, and transmit or provide access to the  
1267 report to the department ~~office~~. The cost of the credit report  
1268 shall be borne by the applicant.

1269 (f) Submit additional information or documentation  
1270 requested by the department ~~office~~ and required by rule  
1271 concerning the applicant or a control person of the applicant.  
1272 Additional information may include documentation of pending and  
1273 prior disciplinary and criminal history events, including arrest  
1274 reports and certified copies of charging documents, plea  
1275 agreements, judgments and sentencing documents, documents  
1276 relating to pretrial intervention, orders terminating probation

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1277 or supervised release, final administrative agency orders, or  
1278 other comparable documents that may provide the department  
1279 ~~office~~ with the appropriate information to determine eligibility  
1280 for licensure.

1281 (g) Submit any other information required by the registry  
1282 for the processing of the application.

1283 (3) An application is considered received for the purposes  
1284 of s. 120.60 upon the department's ~~office's~~ receipt of all  
1285 documentation from the registry, including the completed  
1286 application form, criminal history information, and independent  
1287 credit report, as well as the license application fee, the fee  
1288 required by s. 494.00172, and all applicable fingerprinting  
1289 processing fees.

1290 (4) The department ~~office~~ shall issue a mortgage broker  
1291 license to each person who is not otherwise ineligible and who  
1292 meets the requirements of this section. However, it is a ground  
1293 for denial of licensure if the applicant or one of the  
1294 applicant's control persons:

1295 (a) Has committed any violation specified in ss. 494.001-  
1296 494.0077, or is the subject of a pending felony criminal  
1297 prosecution or a prosecution or an administrative enforcement  
1298 action, in any jurisdiction, which involves fraud, dishonesty,  
1299 breach of trust, money laundering, or any other act of moral  
1300 turpitude.

1301 (b) Has failed to demonstrate the character, general  
1302 fitness, and financial responsibility necessary to command the  
1303 confidence of the community and warrant a determination that the  
1304 applicant will operate honestly, fairly, and efficiently.

1305 1. If the department ~~office~~ has information that could form

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1306 the basis for license denial under this paragraph, before  
1307 denying the license, the department ~~office~~ must notify the  
1308 applicant in writing of the specific items of concern and  
1309 provide the applicant with an opportunity to explain the  
1310 circumstances surrounding the specific items and provide any  
1311 information that the applicant believes is relevant to the  
1312 department's ~~office's~~ determination.

1313 2. For purposes of evaluating adverse information found in  
1314 an applicant's credit report, the information must be considered  
1315 within the totality of the circumstances. Information provided  
1316 by the applicant under subparagraph 1., or information obtained  
1317 by the department ~~office~~ by other means, may be used to provide  
1318 a context for the adverse items. For example, the adverse items  
1319 may have resulted from factors that do not necessarily reflect  
1320 negatively upon the applicant's character, general fitness, or  
1321 financial responsibility.

1322 3. The department ~~office~~ may not use a credit score or the  
1323 absence or insufficiency of credit history information to  
1324 determine character, general fitness, or financial  
1325 responsibility.

1326 4. If information contained in a credit report is used as  
1327 the basis for denying a license, the department ~~office~~ shall, in  
1328 accordance with s. 120.60(3), provide with particularity the  
1329 grounds or basis for denial. The use of the terms "poor credit  
1330 history," "poor credit rating," or similar language does not  
1331 meet the requirements of this paragraph.

1332 (5) The department ~~office~~ shall deny a license if the  
1333 applicant has had a mortgage broker license, or its equivalent,  
1334 revoked in any jurisdiction, or if any of the applicant's

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1335 control persons has had a loan originator license, or its  
1336 equivalent, revoked in any jurisdiction.

1337 (6) A mortgage broker license shall be annulled pursuant to  
1338 s. 120.60 if it was issued by the department ~~office~~ by mistake.  
1339 A license must be reinstated if the applicant demonstrates that  
1340 the requirements for obtaining the license under this chapter  
1341 have been satisfied.

1342 (7) All mortgage broker licenses must be renewed annually  
1343 by December 31 pursuant to s. 494.00322. If a person holding an  
1344 active mortgage broker license has not applied to renew the  
1345 license on or before December 31, the mortgage broker license  
1346 expires on December 31. If a person holding an active mortgage  
1347 broker license has applied to renew the license on or before  
1348 December 31, the mortgage broker license remains active until  
1349 the renewal application is approved or denied. A mortgage broker  
1350 is not precluded from reapplying for licensure upon expiration  
1351 of a previous license.

1352 Section 22. Section 494.00322, Florida Statutes, is amended  
1353 to read:

1354 494.00322 Mortgage broker license renewal.—

1355 (1) In order to renew a mortgage broker license, a mortgage  
1356 broker must:

1357 (a) Submit a completed license renewal form as prescribed  
1358 by department ~~commission~~ rule.

1359 (b) Submit a nonrefundable renewal fee of \$375, the \$100  
1360 nonrefundable fee if required by s. 494.00172, and nonrefundable  
1361 fees to cover the cost of further fingerprint processing and  
1362 retention as set forth in department ~~commission~~ rule.

1363 (c) Submit fingerprints in accordance with s.

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1364 494.00321(2)(d) for any new control persons who have not been  
1365 screened.

1366 (d) Authorize the registry to obtain an independent credit  
1367 report on each of the licensee's control persons from a consumer  
1368 reporting agency, and transmit or provide access to the report  
1369 to the department ~~office~~. The cost of the credit report shall be  
1370 borne by the licensee.

1371 (e) Submit any additional information or documentation  
1372 requested by the department ~~office~~ and required by rule  
1373 concerning the licensee or a control person of the licensee.  
1374 Additional information may include documentation of pending and  
1375 prior disciplinary and criminal history events, including arrest  
1376 reports and certified copies of charging documents, plea  
1377 agreements, judgments and sentencing documents, documents  
1378 relating to pretrial intervention, orders terminating probation  
1379 or supervised release, final administrative agency orders, or  
1380 other comparable documents that may provide the department  
1381 ~~office~~ with the appropriate information to determine eligibility  
1382 for renewal of licensure.

1383 (2) The department ~~office~~ may not renew a mortgage broker  
1384 license unless the licensee continues to meet the minimum  
1385 requirements for initial licensure pursuant to s. 494.00321 and  
1386 adopted rule.

1387 Section 23. Subsection (2) of section 494.00331, Florida  
1388 Statutes, is amended to read:

1389 494.00331 Loan originator and loan processor employment.—

1390 (2) CONTRACT LOAN PROCESSORS.—Subsection (1) does not apply  
1391 to a contract loan processor who has a declaration of intent to  
1392 act solely as a contract loan processor on file with the



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1393 department ~~office~~. The declaration of intent must be on a form  
1394 as prescribed by department ~~commission~~ rule.

1395 (a) A loan originator may withdraw his or her declaration  
1396 of intent. The withdrawal of declaration of intent must be on  
1397 such form as prescribed by department ~~commission~~ rule.

1398 (b) A declaration of intent or a withdrawal of declaration  
1399 of intent is effective upon receipt by the department ~~office~~.

1400 (c) The fee earned by a contract loan processor may be paid  
1401 to the company that employs the loan processor without violating  
1402 the restriction in s. 494.0025(7) requiring fees or commissions  
1403 to be paid to a licensed mortgage broker or mortgage lender or a  
1404 person exempt from licensure under this chapter.

1405 Section 24. Section 494.0035, Florida Statutes, is amended  
1406 to read:

1407 494.0035 Principal loan originator and branch manager for  
1408 mortgage broker.—

1409 (1) Each mortgage broker must be operated by a principal  
1410 loan originator who shall have full charge, control, and  
1411 supervision of the mortgage broker. The principal loan  
1412 originator must have been licensed as a loan originator for at  
1413 least 1 year before being designated as the principal loan  
1414 originator, or must demonstrate to the satisfaction of the  
1415 department ~~office~~ that he or she has been actively engaged in a  
1416 mortgage-related business for at least 1 year before being  
1417 designated as a principal loan originator. Each mortgage broker  
1418 must keep the department ~~office~~ informed of the person  
1419 designated as the principal loan originator as prescribed by  
1420 department ~~commission~~ rule. If the designation is inaccurate,  
1421 the mortgage broker shall be deemed to be operated under the

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1422 full charge, control, and supervision of each officer, director,  
1423 or ultimate equitable owner of a 10-percent or greater interest  
1424 in the mortgage broker, or any other person in a similar  
1425 capacity. A loan originator may not be a principal loan  
1426 originator for more than one mortgage broker at any given time.

1427 (2) Each branch office of a mortgage broker must be  
1428 operated by a branch manager who shall have full charge,  
1429 control, and supervision of the branch office. The designated  
1430 branch manager must be a licensed loan originator pursuant to s.  
1431 494.00312. Each branch office must keep the department ~~office~~  
1432 informed of the person designated as the branch manager as  
1433 prescribed by department ~~commission~~ rule, which includes  
1434 documentation of the individual's acceptance of such  
1435 responsibility. If the designation is inaccurate, the branch  
1436 office shall be deemed to be operated under the full charge,  
1437 control, and supervision of each officer, director, or ultimate  
1438 equitable owner of a 10-percent or greater interest in the  
1439 mortgage broker, or any other person in a similar capacity.

1440 Section 25. Section 494.0036, Florida Statutes, is amended  
1441 to read:

1442 494.0036 Mortgage broker branch office license.-

1443 (1) Each branch office of a mortgage broker must be  
1444 licensed under this section.

1445 (2) The department ~~office~~ shall issue a mortgage broker  
1446 branch office license to a mortgage broker licensee after the  
1447 department ~~office~~ determines that the licensee has submitted a  
1448 completed application for a branch office in a form prescribed  
1449 by department ~~commission~~ rule and payment of an initial  
1450 nonrefundable branch office license fee of \$225 per branch

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1451 office. Application fees may not be prorated for partial years  
1452 of licensure. The branch office license shall be issued in the  
1453 name of the mortgage broker that maintains the branch office. An  
1454 application is considered received for purposes of s. 120.60  
1455 upon receipt of a completed application form as prescribed by  
1456 department ~~commission~~ rule, and the required fees.

1457 (3) A branch office license must be renewed annually at the  
1458 time of renewing the mortgage broker license under s. 494.00322.  
1459 A nonrefundable branch renewal fee of \$225 per branch office  
1460 must be submitted at the time of renewal.

1461 Section 26. Subsection (2) of section 494.0038, Florida  
1462 Statutes, is amended to read:

1463 494.0038 Loan origination and mortgage broker fees and  
1464 disclosures.—

1465 (2) If the mortgage broker is to receive any payment of any  
1466 kind from the mortgage lender, the maximum total dollar amount  
1467 of the payment must be disclosed to the borrower in the written  
1468 mortgage broker agreement as described in paragraph (1)(a). The  
1469 department ~~commission~~ may prescribe by rule an acceptable form  
1470 for disclosure of brokerage fees received from the lender. The  
1471 agreement must state the nature of the relationship with the  
1472 lender, describe how compensation is paid by the lender, and  
1473 describe how the mortgage interest rate affects the compensation  
1474 paid to the mortgage broker.

1475 (a) The exact amount of any payment of any kind by the  
1476 lender to the mortgage broker must be disclosed in writing to  
1477 the borrower within 3 business days after the mortgage broker is  
1478 made aware of the exact amount of the payment from the lender  
1479 but not less than 3 business days before the execution of the

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1480 closing or settlement statement. The licensee bears the burden  
1481 of proving such notification was provided to the borrower.  
1482 Notification is waived if the exact amount of the payment is  
1483 accurately disclosed in the written mortgage broker agreement.

1484 (b) The department ~~commission~~ may prescribe by rule the  
1485 form of disclosure of brokerage fees.

1486 Section 27. Subsection (1) of section 494.004, Florida  
1487 Statutes, is amended to read:

1488 494.004 Requirements of licensees.—

1489 (1) Each licensee under this part shall report to the  
1490 department ~~office~~:

1491 (a) In writing, any conviction of, or plea of nolo  
1492 contendere to, regardless of adjudication, any felony or any  
1493 crime or administrative violation that involves fraud,  
1494 dishonesty, breach of trust, money laundering, or any other act  
1495 of moral turpitude, in any jurisdiction, by the licensee or any  
1496 control person within 30 days after the date of conviction,  
1497 entry of a plea of nolo contendere, or final administrative  
1498 action.

1499 (b) In a form prescribed by rule of the department  
1500 ~~commission~~, any conviction of, or plea of nolo contendere to,  
1501 regardless of adjudication, any felony committed by the licensee  
1502 or any control person within 30 days after the date of  
1503 conviction or the date the plea of nolo contendere is entered.

1504 (c) Any action in bankruptcy, voluntary or involuntary,  
1505 within 30 days after the action is instituted.

1506 (d) On a form prescribed by rule of the department  
1507 ~~commission~~, any change to the information contained in any  
1508 initial application form or any amendment to the application

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1509 within 30 days after the change is effective.

1510 (e) Any change in the principal loan originator, any  
1511 addition or subtraction of a control person, or any change in  
1512 the form of business organization, by written amendment in the  
1513 form and at the time the department ~~commission~~ specifies by  
1514 rule.

1515 (f) Any addition of a control person who has not previously  
1516 filed a Uniform Mortgage Biographical Statement & Consent Form,  
1517 MU2, or has not previously complied with the fingerprinting and  
1518 credit report requirements of ss. 494.00321 and 494.00322, is  
1519 subject to the provisions of these sections. If, after the  
1520 addition of a control person, the department ~~office~~ finds that  
1521 the licensee does not continue to meet licensure requirements,  
1522 the department ~~office~~ may bring an administrative action in  
1523 accordance with s. 494.00255 to enforce the provisions of this  
1524 chapter.

1525 Section 28. Paragraph (a) of subsection (7) of section  
1526 494.00421, Florida Statutes, is amended to read:

1527 494.00421 Fees earned upon obtaining a bona fide  
1528 commitment.—Notwithstanding the provisions of ss. 494.001-  
1529 494.0077, any mortgage broker which contracts to receive a loan  
1530 origination fee from a borrower upon obtaining a bona fide  
1531 commitment shall accurately disclose in the mortgage broker  
1532 agreement:

1533 (7) (a) The following statement, in at least 12-point  
1534 boldface type immediately above the signature lines for the  
1535 borrowers:

1536  
1537 "You are entering into a contract with a mortgage broker to

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1538 obtain a bona fide mortgage loan commitment under the same terms  
1539 and conditions as stated hereinabove or in a separate executed  
1540 good faith estimate form. If the mortgage broker obtains a bona  
1541 fide commitment under the same terms and conditions, you will be  
1542 obligated to pay the loan origination fees even if you choose  
1543 not to complete the loan transaction. If the provisions of s.  
1544 494.00421, Florida Statutes, are not met, the loan origination  
1545 fee can only be earned upon the funding of the mortgage loan.  
1546 The borrower may contact the Department of Business and  
1547 Professional Regulation ~~Office of Financial Regulation~~,  
1548 Tallahassee, Florida, regarding any complaints that the borrower  
1549 may have against the loan originator. The telephone number of  
1550 the department ~~office~~ is: ...(insert telephone number)...."

1551 Section 29. Section 494.00611, Florida Statutes, is amended  
1552 to read:

1553 494.00611 Mortgage lender license.—

1554 (1) Each person who acts as a mortgage lender must be  
1555 licensed under this section.

1556 (2) In order to apply for a mortgage lender license, an  
1557 applicant must:

1558 (a) Submit a completed application form as prescribed by  
1559 the department ~~commission~~ by rule.

1560 (b) Designate a qualified principal loan originator who  
1561 meets the requirements of s. 494.0035 on the application form.

1562 (c) Submit a nonrefundable application fee of \$500, and the  
1563 \$100 nonrefundable fee if required by s. 494.00172. Application  
1564 fees may not be prorated for partial years of licensure.

1565 (d) Submit fingerprints for each of the applicant's control  
1566 persons in accordance with rules adopted by the department

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1567 ~~commission:~~

1568 1. The fingerprints may be submitted to the registry, the  
1569 department office, or a vendor acting on behalf of the registry  
1570 or the department office.

1571 2. The department office may contract with a third-party  
1572 vendor to provide live-scan fingerprinting in lieu of a paper  
1573 fingerprint card.

1574 3. A state criminal history background check must be  
1575 conducted through the Department of Law Enforcement, and a  
1576 federal criminal history background check must be conducted  
1577 through the Federal Bureau of Investigation.

1578 4. All fingerprints submitted to the Department of Law  
1579 Enforcement must be submitted electronically and entered into  
1580 the statewide automated fingerprint identification system  
1581 established in s. 943.05(2)(b) and available for use in  
1582 accordance with s. 943.05(2)(g) and (h). The department office  
1583 shall pay an annual fee to the Department of Law Enforcement to  
1584 participate in the system and inform the Department of Law  
1585 Enforcement of any person whose fingerprints are no longer  
1586 required to be retained.

1587 5. The costs of fingerprint processing, including the cost  
1588 of retaining the fingerprints, shall be borne by the person  
1589 subject to the background check.

1590 6. The department office is responsible for reviewing the  
1591 results of the state and federal criminal history checks and  
1592 determining whether the applicant meets licensure requirements.

1593 (e) Indicate whether the applicant will be seeking a  
1594 servicing endorsement on the application form.

1595 (f) Submit a copy of the applicant's financial audit report

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1596 for the most recent fiscal year, pursuant to United States  
1597 generally accepted accounting principles. If the applicant is a  
1598 wholly owned subsidiary of another corporation, the financial  
1599 audit report for the parent corporation satisfies this  
1600 requirement. The department ~~commission~~ may establish by rule the  
1601 form and procedures for filing the financial audit report,  
1602 including the requirement to file the report with the registry  
1603 when technology is available. The financial audit report must  
1604 document that the applicant has a bona fide and verifiable net  
1605 worth, of at least \$63,000 if the applicant is not seeking a  
1606 servicing endorsement, or at least \$250,000 if the applicant is  
1607 seeking a servicing endorsement, which must be continuously  
1608 maintained as a condition of licensure. However, if the  
1609 applicant held an active license issued before October 1, 2010,  
1610 pursuant to former s. 494.0065, and the applicant is seeking a  
1611 servicing endorsement, the minimum net worth requirement:

- 1612 1. Until September 30, 2011, is \$63,000.
- 1613 2. Between October 1, 2011, and September 30, 2012, is  
1614 \$125,000.
- 1615 3. On or after October 1, 2012, is \$250,000.

1616 (g) Authorize the registry to obtain an independent credit  
1617 report on each of the applicant's control persons from a  
1618 consumer reporting agency, and transmit or provide access to the  
1619 report to the department ~~office~~. The cost of the credit report  
1620 shall be borne by the applicant.

1621 (h) Submit additional information or documentation  
1622 requested by the department ~~office~~ and required by rule  
1623 concerning the applicant or a control person of the applicant.  
1624 Additional information may include documentation of pending and



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1625 prior disciplinary and criminal history events, including arrest  
1626 reports and certified copies of charging documents, plea  
1627 agreements, judgments and sentencing documents, documents  
1628 relating to pretrial intervention, orders terminating probation  
1629 or supervised release, final administrative agency orders, or  
1630 other comparable documents that may provide the department  
1631 ~~office~~ with the appropriate information to determine eligibility  
1632 for licensure.

1633 (i) Submit any other information required by the registry  
1634 for the processing of the application.

1635 (3) An application is considered received for the purposes  
1636 of s. 120.60 upon the department's ~~office's~~ receipt of all  
1637 documentation from the registry, including the completed  
1638 application form, criminal history information, and independent  
1639 credit report, as well as the license application fee, the fee  
1640 required under s. 494.00172, and all applicable fingerprinting  
1641 processing fees.

1642 (4) The department ~~office~~ shall issue a mortgage lender  
1643 license to each person who is not otherwise ineligible and who  
1644 meets the requirements of this section. However, it is a ground  
1645 for denial of licensure if the applicant or one of the  
1646 applicant's control persons:

1647 (a) Has committed any violation specified in ss. 494.001-  
1648 494.0077, or is the subject of a pending felony criminal  
1649 prosecution or a prosecution or an administrative enforcement  
1650 action, in any jurisdiction, which involves fraud, dishonesty,  
1651 breach of trust, money laundering, or any other act of moral  
1652 turpitude.

1653 (b) Has failed to demonstrate the character, general

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1654 fitness, and financial responsibility necessary to command the  
1655 confidence of the community and warrant a determination that the  
1656 applicant will operate honestly, fairly, and efficiently.

1657 1. If the department ~~office~~ has information that could form  
1658 the basis for license denial under this paragraph, before  
1659 denying the license, the department ~~office~~ must notify the  
1660 applicant in writing of the specific items of concern and  
1661 provide the applicant with an opportunity to explain the  
1662 circumstances surrounding the specific items and provide any  
1663 information that the applicant believes is relevant to the  
1664 department's ~~office's~~ determination.

1665 2. For purposes of evaluating adverse information found in  
1666 an applicant's credit report, the information must be considered  
1667 within the totality of the circumstances. Information provided  
1668 by the applicant under subparagraph 1., or information obtained  
1669 by the department ~~office~~ by other means, may be used to provide  
1670 a context for the adverse items. For example, the adverse items  
1671 may have resulted from factors that do not necessarily reflect  
1672 negatively upon the applicant's character, general fitness, or  
1673 financial responsibility.

1674 3. The department ~~office~~ may not use a credit score or the  
1675 absence or insufficiency of credit history information to  
1676 determine character, general fitness, or financial  
1677 responsibility.

1678 4. If information contained in a credit report is used as  
1679 the basis for denying a license, the department ~~office~~ shall, in  
1680 accordance with s. 120.60(3), provide with particularity the  
1681 grounds or basis for denial. The use of the terms "poor credit  
1682 history," "poor credit rating," or similar language does not

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1683 meet the requirements of this paragraph.

1684 (5) The department ~~office~~ may not issue a license if the  
1685 applicant has had a mortgage lender license or its equivalent  
1686 revoked in any jurisdiction, or any of the applicant's control  
1687 persons has ever had a loan originator license or its equivalent  
1688 revoked in any jurisdiction.

1689 (6) A person required to be licensed under this part, or an  
1690 agent or employee thereof, is deemed to have consented to the  
1691 venue of courts in this state regarding any matter within the  
1692 authority of ss. 494.001-494.0077 regardless of where an act or  
1693 violation was committed.

1694 (7) A license issued in accordance with this part is not  
1695 transferable or assignable.

1696 (8) A mortgage lender or branch office license may be  
1697 annulled pursuant to s. 120.60 if it was issued by the  
1698 department ~~office~~ by mistake. A license must be reinstated if  
1699 the applicant demonstrates that the requirements for obtaining  
1700 the license under this chapter have been satisfied.

1701 (9) Each lender, regardless of the number of branches it  
1702 operates, shall designate a principal loan originator  
1703 representative who exercises control of the licensee's business,  
1704 and a branch manager for each branch office. Each mortgage  
1705 lender must keep the department ~~office~~ informed of the persons  
1706 designated as prescribed by department ~~commission~~ rule, which  
1707 includes documentation of the individual's acceptance of such  
1708 responsibility. If the designation is inaccurate, the branch  
1709 shall be deemed to be operated under the full charge, control,  
1710 and supervision by each officer, director, or ultimate equitable  
1711 owner of a 10-percent or greater interest in the mortgage lender

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1712 business, or any other person in a similar capacity during that  
1713 time.

1714 (10) All mortgage lender licenses must be renewed annually  
1715 by December 31 pursuant to s. 494.00612. If a person holding an  
1716 active mortgage lender license has not applied to renew the  
1717 license on or before December 31, the mortgage lender license  
1718 expires on December 31. If a person holding an active mortgage  
1719 lender license has applied to renew the license on or before  
1720 December 31, the mortgage lender license remains active until  
1721 the renewal application is approved or denied. A mortgage lender  
1722 is not precluded from reapplying for licensure upon expiration  
1723 of a previous license.

1724 Section 30. Section 494.00612, Florida Statutes, is amended  
1725 to read:

1726 494.00612 Mortgage lender license renewal.-

1727 (1) In order to renew a mortgage lender license, a mortgage  
1728 lender must:

1729 (a) Submit a completed license renewal form as prescribed  
1730 by department ~~commission~~ rule.

1731 (b) Submit a nonrefundable renewal fee of \$475, the \$100  
1732 nonrefundable fee if required by s. 494.00172, and nonrefundable  
1733 fees to cover the cost of further fingerprint processing and  
1734 retention as set forth in department ~~commission~~ rule.

1735 (c) Submit fingerprints in accordance with s.  
1736 494.00611(2) (d) for any new control persons who have not been  
1737 screened.

1738 (d) Provide proof that the mortgage lender continues to  
1739 meet the applicable net worth requirement in a form prescribed  
1740 by department ~~commission~~ rule.

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1741 (e) Authorize the registry to obtain an independent credit  
1742 report on each of the mortgage lender's control persons from a  
1743 consumer reporting agency, and transmit or provide access to the  
1744 report to the department ~~office~~. The cost of the credit report  
1745 shall be borne by the licensee.

1746 (f) Submit any additional information or documentation  
1747 requested by the department ~~office~~ and required by rule  
1748 concerning the licensee. Additional information may include  
1749 documentation of pending and prior disciplinary and criminal  
1750 history events, including arrest reports and certified copies of  
1751 charging documents, plea agreements, judgments and sentencing  
1752 documents, documents relating to pretrial intervention, orders  
1753 terminating probation or supervised release, final  
1754 administrative agency orders, or other comparable documents that  
1755 may provide the department ~~office~~ with the appropriate  
1756 information to determine eligibility for renewal of licensure.

1757 (2) The department ~~office~~ may not renew a mortgage lender  
1758 license unless the mortgage lender continues to meet the minimum  
1759 requirements for initial licensure pursuant to s. 494.00611 and  
1760 adopted rule.

1761 Section 31. Section 494.0063, Florida Statutes, is amended  
1762 to read:

1763 494.0063 Audited financial statements.—All audited  
1764 financial statements required by ss. 494.001-494.0077 must be  
1765 prepared by an independent licensed certified public accountant.  
1766 A mortgage lender must obtain an annual financial audit report  
1767 as of the date of the licensee's fiscal year end, as disclosed  
1768 to the department ~~office~~ on the application or a subsequent  
1769 amendment to the application. The mortgage lender shall submit a

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1770 copy of the report to the department ~~office~~ within 120 days  
1771 after the end of the licensee's fiscal year. If the licensee is  
1772 a wholly owned subsidiary of another corporation, the financial  
1773 audit report of the parent corporation satisfies this  
1774 requirement. If the licensee changes its fiscal year, the  
1775 licensee must file a report within 18 months after the  
1776 previously submitted report. The department ~~commission~~ may  
1777 establish by rule the procedures and form for filing a financial  
1778 audit report, including the requirement to file the report with  
1779 the registry when technology is available.

1780 Section 32. Subsection (2) of section 494.0066, Florida  
1781 Statutes, is amended to read:

1782 494.0066 Branch offices.—

1783 (2) The department ~~office~~ shall issue a branch office  
1784 license to a mortgage lender after the department ~~office~~  
1785 determines that the mortgage lender has submitted a completed  
1786 branch office application form as prescribed by rule by the  
1787 department ~~commission~~ and an initial nonrefundable branch office  
1788 license fee of \$225 per branch office. Application fees may not  
1789 be prorated for partial years of licensure. The branch office  
1790 application must include the name and license number of the  
1791 mortgage lender under this part, the name of the branch manager  
1792 in charge of the branch office, and the address of the branch  
1793 office. The branch office license shall be issued in the name of  
1794 the mortgage lender and must be renewed in conjunction with the  
1795 license renewal. An application is considered received for  
1796 purposes of s. 120.60 upon receipt of a completed branch office  
1797 renewal form, as prescribed by department ~~commission~~ rule, and  
1798 the required fees.

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1799 Section 33. Section 494.00665, Florida Statutes, is amended  
1800 to read:

1801 494.00665 Principal loan originator and branch manager for  
1802 mortgage lender.—

1803 (1) Each mortgage lender business must be operated by a  
1804 principal loan originator who shall have full charge, control,  
1805 and supervision of the mortgage lender business. The principal  
1806 loan originator must be licensed as a loan originator pursuant  
1807 to s. 494.00312. Each mortgage lender must keep the department  
1808 ~~office~~ informed of the person designated as the principal loan  
1809 originator as prescribed by department ~~commission~~ rule. If the  
1810 designation is inaccurate, the business shall be deemed to be  
1811 operated under the full charge, control, and supervision of each  
1812 officer, director, or ultimate equitable owner of a 10-percent  
1813 or greater interest in the mortgage lender business, or any  
1814 other person in a similar capacity during that time.

1815 (2) Each branch office of a mortgage lender must be  
1816 operated by a branch manager who shall have full charge,  
1817 control, and supervision of the branch office. The designated  
1818 branch manager must be a licensed loan originator pursuant to s.  
1819 494.00312. Each mortgage lender must keep the department ~~office~~  
1820 informed of the person designated as the branch manager as  
1821 prescribed by department ~~commission~~ rule, which includes  
1822 documentation of the individual's acceptance of such  
1823 responsibility. If the designation is inaccurate, the branch  
1824 office shall be deemed to be operated under the full charge,  
1825 control, and supervision of each officer, director, or ultimate  
1826 equitable owner of a 10-percent or greater interest in the  
1827 mortgage lender business, or any other person in a similar

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1828 capacity during that time.

1829 Section 34. Subsections (3), (4), (5), (6), (8), and (12)  
1830 of section 494.0067, Florida Statutes, are amended to read:

1831 494.0067 Requirements of mortgage lenders.—

1832 (3) A mortgage lender shall report, on a form prescribed by  
1833 rule of the department ~~commission~~, any change in the information  
1834 contained in any initial application form, or any amendment  
1835 thereto, within 30 days after the change is effective.

1836 (4) A mortgage lender shall report any changes in the  
1837 principal loan originator, any addition or subtraction of a  
1838 control person, or any change in the form of business  
1839 organization by written amendment in such form and at such time  
1840 that the department ~~commission~~ specifies by rule. Any addition  
1841 of a control person who has not previously filed a Uniform  
1842 Mortgage Biographical Statement & Consent Form, MU2, or has not  
1843 previously complied with the fingerprinting and credit report  
1844 requirements of s. 494.00611 is subject to the provisions of  
1845 this section. If, after the addition of a control person, the  
1846 department ~~office~~ determines that the licensee does not continue  
1847 to meet licensure requirements, the department ~~office~~ may bring  
1848 administrative action in accordance with s. 494.00255 to enforce  
1849 this section.

1850 (5) Each mortgage lender shall report in a form prescribed  
1851 by rule of the department ~~commission~~ any indictment,  
1852 information, charge, conviction, or plea of guilty or nolo  
1853 contendere, regardless of adjudication, to any felony or any  
1854 crime or administrative violation that involves fraud,  
1855 dishonesty, breach of trust, money laundering, or any other act  
1856 of moral turpitude, in any jurisdiction, by the licensee or any



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1857 principal officer, director, or ultimate equitable owner of 10  
1858 percent or more of the licensed corporation, within 30 business  
1859 days after the indictment, information, charge, conviction, or  
1860 final administrative action.

1861 (6) Each mortgage lender shall report any action in  
1862 bankruptcy, voluntary or involuntary, to the department ~~office~~,  
1863 within 30 business days after the action is instituted.

1864 (8) Each mortgage lender shall provide an applicant for a  
1865 mortgage loan a good faith estimate of the costs the applicant  
1866 can reasonably expect to pay in obtaining a mortgage loan. The  
1867 good faith estimate of costs must be mailed or delivered to the  
1868 applicant within 3 business days after the licensee receives a  
1869 written loan application from the applicant. The estimate of  
1870 costs may be provided to the applicant by a person other than  
1871 the licensee making the loan. The good faith estimate must  
1872 identify the recipient of all payments charged to the borrower  
1873 and, except for all fees to be received by the mortgage broker  
1874 and the mortgage lender, may be disclosed in generic terms, such  
1875 as, but not limited to, paid to appraiser, officials, title  
1876 company, or any other third-party service provider. The licensee  
1877 bears the burden of proving such disclosures were provided to  
1878 the borrower. The department ~~commission~~ may adopt rules that set  
1879 forth the disclosure requirements of this section.

1880 (12) A mortgage lender must report to the department ~~office~~  
1881 the failure to meet the applicable net worth requirements of s.  
1882 494.00611 within 2 days after the mortgage lender's knowledge of  
1883 such failure or after the mortgage lender should have known of  
1884 such failure.

1885 Section 35. Subsection (6) of section 494.0069, Florida

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1886 Statutes, is amended to read:

1887 494.0069 Lock-in agreement.—

1888 (6) The department ~~commission~~ may adopt by rule a form for  
1889 required lock-in agreement disclosures.

1890 Section 36. Subsection (2) of section 494.00721, Florida  
1891 Statutes, is amended to read:

1892 494.00721 Net worth.—

1893 (2) If a mortgage lender fails to satisfy the net worth  
1894 requirements, the mortgage lender shall immediately cease taking  
1895 any new mortgage loan applications. Thereafter, the mortgage  
1896 lender shall have up to 60 days within which to satisfy the net  
1897 worth requirements. If the licensee makes the department ~~office~~  
1898 aware, before ~~prior to~~ an examination, that the licensee no  
1899 longer meets the net worth requirements, the mortgage lender  
1900 shall have 120 days within which to satisfy the net worth  
1901 requirements. A mortgage lender may not resume acting as a  
1902 mortgage lender without written authorization from the  
1903 department ~~office~~, which authorization shall be granted if the  
1904 mortgage lender provides the department ~~office~~ with  
1905 documentation that ~~which~~ satisfies the requirements of s.  
1906 494.00611, whichever is applicable.

1907 Section 37. Paragraph (b) of subsection (2) of section  
1908 494.0076, Florida Statutes, is amended to read:

1909 494.0076 Servicing audits.—

1910 (2)

1911 (b) The department ~~commission~~ may adopt rules to ensure  
1912 that investors are adequately protected under this subsection.

1913 Section 38. Section 494.0079, Florida Statutes, is amended  
1914 to read:

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1915 494.0079 Definitions.—As used in this act:

1916 (1) "Affiliate" means any company that controls, is  
 1917 controlled by, or is in common control with another company, as  
 1918 set forth in 12 U.S.C. ss. 1841 et seq. and the regulations  
 1919 adopted thereunder.

1920 (2) "Annual percentage rate" means the annual percentage  
 1921 rate for the loan calculated according to the provisions of 15  
 1922 U.S.C. s. 1606 and the regulations adopted thereunder by the  
 1923 Federal Reserve Board.

1924 (3) "Borrower" means any natural person obligated to repay  
 1925 a loan, including, but not limited to, a coborrower, cosignor,  
 1926 or guarantor.

1927 (4) "Bridge loan" means a loan having ~~with~~ a maturity of  
 1928 less than 18 months which ~~that only~~ requires the payment only of  
 1929 interest until such time as the entire unpaid balance is due and  
 1930 payable.

1931 (5) "Department" means the Department of Business and  
 1932 Professional Regulation.

1933 ~~(5) "Commission" means the Financial Services Commission.~~

1934 ~~(6) "Office" means the Office of Financial Regulation of~~  
 1935 ~~the commission.~~

1936 ~~(6)-(7)~~ (6) "High-cost home loan" means a home loan as defined  
 1937 in 15 U.S.C. s. 1602(aa) and regulations adopted thereunder.

1938 ~~(7)-(8)~~ (7) "Lender" means any person who makes a high-cost home  
 1939 loan or acts as a mortgage broker or lender, finance company, or  
 1940 retail installment seller with respect to a high-cost home loan,  
 1941 but does ~~shall~~ not include any entity chartered by the United  
 1942 States Congress when engaging in secondary market mortgage  
 1943 transactions as an assignee or otherwise.

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1944 Section 39. Section 494.00795, Florida Statutes, is amended  
1945 to read:

1946 494.00795 Powers and duties of the department ~~commission~~  
1947 ~~and office~~; investigations; examinations; injunctions; orders.-

1948 (1) (a) The department ~~is commission and office~~ are  
1949 responsible for the administration and enforcement of this act.

1950 (b) The department ~~commission~~ may adopt rules pursuant to  
1951 ~~ss. 120.536(1) and 120.54~~ to administer ~~implement~~ this act. The  
1952 department ~~commission~~ may adopt rules to allow electronic  
1953 submission of any forms, documents, or fees required by this  
1954 act.

1955 (2) (a) The department ~~office~~ may conduct an investigation  
1956 of any person whenever the department ~~office~~ has reason to  
1957 believe, upon complaint or otherwise, that any violation of the  
1958 act has occurred.

1959 (b) Any person having reason to believe that a provision of  
1960 this act has been violated may file a written complaint with the  
1961 department ~~office~~ setting forth the details of the alleged  
1962 violation.

1963 (c) The department ~~office~~ may conduct examinations of any  
1964 person to determine compliance with this act.

1965 (3) (a) The department ~~office~~ may bring action, through its  
1966 own counsel in the name and on behalf of the state, against any  
1967 person who has violated or is about to violate any provision of  
1968 this act, or any rule or order issued under the act, to enjoin  
1969 the person from continuing in or engaging in any act in  
1970 furtherance of the violation.

1971 (b) In any injunctive proceeding, the court may, on due  
1972 showing by the department ~~office~~, issue a subpoena or subpoena

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1973 duces tecum requiring the attendance of any witness and  
1974 requiring the production of any books, accounts, records, or  
1975 other documents and materials that appear necessary to the  
1976 expeditious resolution of the application for injunction.

1977 (4) The department ~~office~~ may issue and serve upon any  
1978 person an order to cease and desist and to take corrective  
1979 action whenever the department ~~office~~ has reason to believe the  
1980 person is violating, has violated, or is about to violate any  
1981 provision of this act, any rule or order issued under this act,  
1982 or any written agreement between the person and the department  
1983 ~~office~~. All procedural matters relating to issuance and  
1984 enforcement of cease and desist orders are governed by the  
1985 Administrative Procedure Act.

1986 (5) Whenever the department ~~office~~ finds a person in  
1987 violation of this act, it may enter an order imposing a fine in  
1988 an amount not exceeding \$5,000 for each count or separate  
1989 offense, provided that the aggregate fine for all violations of  
1990 this act which ~~that~~ could have been asserted at the time of the  
1991 order imposing the fine may ~~shall~~ not exceed \$500,000.

1992 (6) Any violation of this act shall also be deemed to be a  
1993 violation of this chapter, ~~chapter 516, chapter 520,~~ chapter  
1994 655, chapter 657, chapter 658, chapter 660, chapter 663, chapter  
1995 665, or chapter 667. The department ~~commission~~ may adopt rules  
1996 to enforce this subsection.

1997 Section 40. Section 494.00797, Florida Statutes, is amended  
1998 to read:

1999 494.00797 General rule.—All counties and municipalities of  
2000 this state are prohibited from enacting and enforcing  
2001 ordinances, resolutions, and rules regulating financial or

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2002 lending activities, including ordinances, resolutions, and rules  
2003 disqualifying persons from doing business with a city, county,  
2004 or municipality based upon lending interest rates or imposing  
2005 reporting requirements or any other obligations upon persons  
2006 regarding financial services or lending practices of persons or  
2007 entities, and any subsidiaries or affiliates thereof, who:

2008 (1) Are subject to the jurisdiction of the department  
2009 ~~office~~, including for activities subject to this chapter, except  
2010 entities licensed under s. 537.004;

2011 (2) Are subject to the jurisdiction of the Office of Thrift  
2012 Supervision, the Office of the Comptroller of the Currency, the  
2013 National Credit Union Administration, the Federal Deposit  
2014 Insurance Corporation, the Federal Trade Commission, or the  
2015 United States Department of Housing and Urban Development;

2016 (3) Originate, purchase, sell, assign, secure, or service  
2017 property interests or obligations created by financial  
2018 transactions or loans made, executed, or originated by persons  
2019 referred to in subsection (1) or subsection (2) to assist or  
2020 facilitate such transactions;

2021 (4) Are chartered by the United States Congress to engage  
2022 in secondary market mortgage transactions; or

2023 (5) Are created by the Florida Housing Finance Corporation.

2024  
2025 Proof of noncompliance with this act can be used by a city,  
2026 county, or municipality of this state to disqualify a vendor or  
2027 contractor from doing business with a city, county, or  
2028 municipality of this state.

2029 Section 41. Section 516.01, Florida Statutes, is amended to  
2030 read:

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- 2031 516.01 Definitions.—As used in this chapter, the term:
- 2032 (1) "Consumer finance borrower" or "borrower" means a
- 2033 person who has incurred ~~either~~ direct or contingent liability to
- 2034 repay a consumer finance loan.
- 2035 (2) "Consumer finance loan" means a loan of money, credit,
- 2036 goods, or choses in action, including, except as otherwise
- 2037 specifically indicated, provision of a line of credit, in an
- 2038 amount or to a value of \$25,000 or less for which the lender
- 2039 charges, contracts for, collects, or receives interest at a rate
- 2040 greater than 18 percent per annum.
- 2041 ~~(3) "Commission" means the Financial Services Commission.~~
- 2042 ~~(4) "Office" means the Office of Financial Regulation of~~
- 2043 ~~the commission.~~
- 2044 (3)~~(5)~~ "Interest" means the cost of obtaining a consumer
- 2045 finance loan and includes any profit or advantage of any kind
- 2046 which ~~whatsoever that~~ a lender may charge, contract for,
- 2047 collect, receive, or in anywise obtain, including by means of
- 2048 any collateral sale, purchase, or agreement, as a condition for
- 2049 a consumer finance loan. Charges specifically permitted by this
- 2050 chapter, including commissions received for insurance written as
- 2051 permitted by this chapter, are ~~shall~~ not be deemed interest.
- 2052 (4) "Lender" means a person who makes and collects a
- 2053 consumer finance loan.
- 2054 ~~(6) "License" means a permit issued under this chapter to~~
- 2055 ~~make and collect loans in accordance with this chapter at a~~
- 2056 ~~single place of business.~~
- 2057 ~~(7) "Licensee" means a person to whom a license is issued.~~
- 2058 ~~(8) "Control person" means an individual, partnership,~~
- 2059 ~~corporation, trust, or other organization that possesses the~~

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2060 ~~power, directly or indirectly, to direct the management or~~  
2061 ~~policies of a company, whether through ownership of securities,~~  
2062 ~~by contract, or otherwise. A person is presumed to control a~~  
2063 ~~company if, with respect to a particular company, that person:~~

2064 ~~(a) Is a director, general partner, or officer exercising~~  
2065 ~~executive responsibility or having similar status or functions;~~

2066 ~~(b) Directly or indirectly may vote 10 percent or more of a~~  
2067 ~~class of a voting security or sell or direct the sale of 10~~  
2068 ~~percent or more of a class of voting securities; or~~

2069 ~~(c) In the case of a partnership, may receive upon~~  
2070 ~~dissolution or has contributed 10 percent or more of the~~  
2071 ~~capital.~~

2072 Section 42. Section 516.02, Florida Statutes, is amended to  
2073 read:

2074 516.02 Loans; lines of credit; rate of interest; ~~license.~~

2075 ~~(1) A person must not engage in the business of making~~  
2076 ~~consumer finance loans unless she or he is authorized to do so~~  
2077 ~~under this chapter or other statutes and unless the person first~~  
2078 ~~obtains a license from the office.~~

2079 (1)~~(2)~~(a) A person who is engaged in the business of making  
2080 loans of money, except as authorized by this chapter or other  
2081 statutes of this state, may not directly or indirectly charge,  
2082 contract for, or receive any interest or consideration greater  
2083 than 18 percent per annum upon the loan, use, or forbearance of  
2084 money, goods, or choses in action, or upon the loan or use of  
2085 credit, of the amount or value of \$25,000 or less.

2086 (b) The prohibition in paragraph (a) applies to any lender  
2087 who, as security for any such loan, use, or forbearance of  
2088 money, goods, or choses in action, or for any such loan or use



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2089 of credit, makes a pretended purchase of property from any  
2090 person and permits the owner or pledgor to retain ~~the~~ possession  
2091 of the property thereof or who by any device or pretense of  
2092 charging for services or otherwise seeks to obtain a greater  
2093 compensation than is authorized by this chapter.

2094 (c) A loan for which a greater rate of interest or charge  
2095 than is allowed by this chapter has been contracted for or  
2096 received, wherever made, is not enforceable in this state, and  
2097 each person who in any manner participates in the loan ~~therein~~  
2098 in this state is subject to this chapter. However, this  
2099 paragraph does not apply to loans legally made to a resident of  
2100 another state by a person within that state if that state has in  
2101 effect a regulatory small loan or consumer finance law similar  
2102 in principle to this chapter.

2103 ~~(2)(3)~~ A lender licensee may offer lines of credit not  
2104 exceeding \$25,000 and may charge, contract for, and receive  
2105 interest charges and other charges pursuant to s. 516.031,  
2106 except that a lender licensee may not offer a credit card.

2107 ~~(3)(4)~~ This chapter does not apply to any person who does  
2108 business under, and as permitted by, any law of this state or of  
2109 the United States relating to banks, savings banks, trust  
2110 companies, building and loan associations, credit unions, or  
2111 industrial loan and investment companies. A pawnbroker may not  
2112 make loans ~~be licensed to transact business~~ under this chapter.

2113 Section 43. Section 516.03, Florida Statutes, is repealed.

2114 Section 44. Section 516.031, Florida Statutes, is amended  
2115 to read:

2116 516.031 Finance charge; maximum rates.—

2117 (1) INTEREST RATES.—A lender ~~Every licensee~~ may lend any

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2118 sum of money not exceeding \$25,000. A lender licensee may not  
2119 take a security interest secured by land on any loan less than  
2120 \$1,000. The lender licensee may charge, contract for, and  
2121 receive ~~thereon~~ interest charges on the loan as ~~provided and~~  
2122 authorized by this section. The maximum interest rate is ~~shall~~  
2123 ~~be~~ 30 percent per annum, computed on the first \$2,000 of the  
2124 principal amount as computed from time to time; 24 percent per  
2125 annum on that part of the principal amount as computed from time  
2126 to time exceeding \$2,000 and not exceeding \$3,000; and 18  
2127 percent per annum on that part of the principal amount as  
2128 computed from time to time exceeding \$3,000 and not exceeding  
2129 \$25,000. The original principal amount as used in this section  
2130 is ~~shall be~~ the same amount as the amount financed as defined by  
2131 the federal Truth in Lending Act and Regulation Z of the Board  
2132 of Governors of the Federal Reserve System. In determining  
2133 compliance with the statutory maximum interest and finance  
2134 charges set forth in this subsection ~~herein~~, the computations  
2135 used must ~~utilized shall~~ be simple interest and not add-on  
2136 interest or any other computations. If ~~When~~ two or more interest  
2137 rates are to be applied to the principal amount of a loan, the  
2138 lender licensee may charge, contract for, and receive interest  
2139 at that single annual percentage rate that ~~which~~ if applied  
2140 according to the actuarial method to each of the scheduled  
2141 periodic balances of principal would produce at maturity the  
2142 same total amount of interest as would result from the  
2143 application of the two or more rates otherwise permitted, based  
2144 upon the assumption that all payments are made as agreed.

2145 (2) ANNUAL PERCENTAGE RATE UNDER FEDERAL TRUTH IN LENDING  
2146 ACT.—The annual percentage rate of finance charge which may be

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2147 contracted for and received under any loan contract made by a  
2148 lender licensee under this chapter may equal, but not exceed,  
2149 the annual percentage rate that ~~which~~ must be computed and  
2150 disclosed as required by the federal Truth in Lending Act and  
2151 Regulation Z of the Board of Governors of the Federal Reserve  
2152 System. The maximum annual percentage rate of finance charge  
2153 which may be contracted for and received is 12 times the maximum  
2154 monthly rate, and the maximum monthly rate must ~~shall~~ be  
2155 computed on the basis of one-twelfth of the annual rate for each  
2156 full month. The maximum daily rate of finance charge is one-  
2157 thirtieth of the maximum monthly rate ~~The commission shall by~~  
2158 ~~rule establish the rate for each day in a fraction of a month~~  
2159 when the period for which the charge is computed is more or less  
2160 than 1 month.

2161 (3) OTHER CHARGES.—

2162 (a) In addition to the interest, delinquency, and insurance  
2163 charges authorized in this section, a lender may not, directly  
2164 or indirectly, impose additional ~~herein provided for, no further~~  
2165 ~~or other charges or amount whatsoever~~ for an any examination,  
2166 service, commission, or any other purpose ~~thing or otherwise~~  
2167 ~~shall be directly or indirectly charged, contracted for, or~~  
2168 ~~received as a condition to the grant of a loan, except:~~

2169 1. An amount not to exceed \$25 to reimburse a portion of  
2170 the costs for investigating the character and credit of the  
2171 person applying for the loan;

2172 2. An annual fee of \$25 on the anniversary date of each  
2173 line-of-credit account;

2174 3. Charges paid for brokerage fee on a loan or line of  
2175 credit of more than \$10,000, title insurance, and the appraisal

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2176 of real property offered as security if ~~when~~ paid to a third  
2177 party and supported by an actual expenditure;

2178 4. Intangible personal property tax on the loan note or  
2179 obligation if ~~when~~ secured by a lien on real property;

2180 5. The documentary excise tax and lawful fees, if any,  
2181 actually and necessarily paid out by the lender ~~licensee~~ to any  
2182 public officer for filing, recording, or releasing in any public  
2183 office any instrument securing the loan, which fees may be  
2184 collected when the loan is made or at any time thereafter;

2185 6. The premium payable for any insurance in lieu of  
2186 perfecting any security interest otherwise required by the  
2187 lender ~~licensee~~ in connection with the loan, if the premium does  
2188 not exceed the fees that ~~which~~ would otherwise be payable, which  
2189 premium may be collected when the loan is made or at any time  
2190 thereafter;

2191 7. Actual and reasonable attorney ~~attorney's~~ fees and court  
2192 costs as determined by the court in which suit is filed;

2193 8. Actual and commercially reasonable expenses of  
2194 repossession, storing, repairing and placing in condition for  
2195 sale, and selling of any property pledged as security; or

2196 9. A delinquency charge not to exceed \$10 for each payment  
2197 in default for a period of not less than 10 days, if the charge  
2198 is agreed upon, in writing, between the parties before imposing  
2199 the charge.

2200

2201 Any charges, including interest, in excess of the combined total  
2202 of all charges authorized and permitted by this chapter  
2203 constitute a violation of chapter 687 governing interest and  
2204 usury, and the penalties of that chapter apply. If ~~In the event~~

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2205 ~~ef~~ a bona fide error occurs, the lender licensee shall refund or  
2206 credit the borrower with the amount of the overcharge  
2207 immediately but within 20 days after ~~from~~ the discovery of such  
2208 error.

2209 (b) Notwithstanding ~~the provisions of~~ paragraph (a), any  
2210 lender of money who receives a check, draft, negotiable order of  
2211 withdrawal, or like instrument drawn on a bank or other  
2212 depository institution, which instrument is given by a borrower  
2213 as full or partial repayment of a loan, may, if such instrument  
2214 is not paid or is dishonored by such institution, make and  
2215 collect from the borrower a bad check charge of not more than  
2216 the greater of \$20 or an amount equal to the actual charge made  
2217 to the lender by the depository institution for the return of  
2218 the unpaid or dishonored instrument.

2219 (4) DIVIDED LOANS.—A lender may not ~~No licensee shall~~  
2220 induce or permit any borrower to split up or divide any loan. A  
2221 lender may not ~~No licensee shall~~ induce or permit any person, or  
2222 any husband and wife, jointly or severally, to become obligated  
2223 to the lender licensee, directly or contingently or both, under  
2224 more than one contract of loan at the same time, for the  
2225 purpose, or with the result, of obtaining a greater finance  
2226 charge than would otherwise be permitted by this section.

2227 (5) UNPAID INTEREST UPON REFINANCING.—If all or part of the  
2228 consideration for a new loan contract is the unpaid principal  
2229 balance of a prior loan with the lender licensee, the principal  
2230 amount payable under the new loan contract may include not more  
2231 than 60 days' unpaid interest accrued on the prior loan.

2232 Section 45. Section 516.035, Florida Statutes, is amended  
2233 to read:

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2234           516.035 Rate of interest upon default.—~~If In the event that~~  
 2235 any balance remains unpaid at the expiration of the scheduled  
 2236 maturity date of a loan, a lender licensee may continue to  
 2237 charge interest on the unpaid balance at the rate provided for  
 2238 in s. 516.031(1) for a period not to exceed 12 months.  
 2239 Thereafter, the interest may shall not exceed the permissible  
 2240 rate of interest provided by chapter 687. When advances are made  
 2241 pursuant to a line of credit, a lender licensee may charge  
 2242 interest on the unpaid balance at the rate provided for in s.  
 2243 516.031(1) for the period that a balance remains unpaid.

2244           Section 46. Section 516.05, Florida Statutes, is repealed.

2245           Section 47. Section 516.07, Florida Statutes, is repealed.

2246           Section 48. Section 516.11, Florida Statutes, is repealed.

2247           Section 49. Section 516.12, Florida Statutes, is repealed.

2248           Section 50. Section 516.15, Florida Statutes, is amended to  
 2249 read:

2250           516.15 Duties of lender licensee.—A lender must ~~Every~~  
 2251 ~~licensee shall:~~

2252           (1) Deliver to the borrower at the time a loan is made a  
 2253 statement in the English language showing in clear and distinct  
 2254 terms the amount and date of the loan and the date of its  
 2255 maturity; the nature of the security, if any, for the loan; the  
 2256 name and address of the borrower and of the lender licensee; and  
 2257 the rate of interest charged. However, with respect to a line of  
 2258 credit, the statement need not show a maturity date.

2259           (2) Give to the borrower a plain and complete receipt for  
 2260 each payment made on account of any loan at the time the payment  
 2261 is made or, alternatively, furnish to the borrower an annual  
 2262 statement showing the amount of interest paid on the loan during

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2263 the previous year as well as the remaining balance on the loan,  
2264 ~~if provided~~ a simple receipt is given to the borrower for each  
2265 payment made in cash and for any payment when requested in  
2266 writing by the borrower.

2267 (3) Permit payment of the loan in whole or in part before  
2268 ~~prior to~~ its maturity with interest on the ~~such~~ payment to the  
2269 date of the payment thereof.

2270 (4) Upon repayment of the loan in full, mark indelibly  
2271 every paper signed by the borrower with the word "Paid" or  
2272 "Canceled" and release any mortgage, restore any pledge, cancel  
2273 and return any note, and cancel and return any assignment given  
2274 by the borrower as security.

2275 Section 51. Section 516.16, Florida Statutes, is amended to  
2276 read:

2277 516.16 Confession of judgment; power of attorney; contents  
2278 of notes and security. A lender may not ~~No licensee shall~~ take:  
2279 any

2280 (1) A confession of judgment or a ~~any~~ power of attorney;  
2281 ~~Nor shall a licensee take any~~

2282 (2) A note, a promise to pay, or a security that does not  
2283 state the actual amount of the loan, the time for which it is  
2284 made, and the rate of interest charged; or, ~~nor any~~

2285 (3) An instrument in which blanks are left to be filled  
2286 after execution.

2287  
2288 However, with respect to a line of credit, the note, promise to  
2289 pay, or security need not state the time for which it is made.

2290 Section 52. Section 516.19, Florida Statutes, is amended to  
2291 read:

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2292           516.19 Penalties.—~~A~~ Any person who violates any of the  
 2293 provisions of ~~s. 516.02~~, s. 516.031 commits, ~~s. 516.05(3)~~, ~~s.~~  
 2294 ~~516.05(6)~~, or ~~s. 516.07(1)(c)~~ is guilty of a misdemeanor of the  
 2295 first degree, punishable as provided in s. 775.082 or s.  
 2296 775.083.

2297           Section 53. Section 516.21, Florida Statutes, is amended to  
 2298 read:

2299           516.21 Restriction of borrower's indebtedness.—

2300           (1) A lender may not ~~No licensee shall~~ directly or  
 2301 indirectly charge, contract for, or receive any interest,  
 2302 discount, or consideration greater than 18 percent per annum  
 2303 upon any loan, or upon any part or all of any aggregate loan  
 2304 indebtedness of the same borrower, of the amount of more than  
 2305 \$25,000. The foregoing prohibition ~~shall~~ also applies ~~apply~~ to  
 2306 any lender licensee who permits any person, as borrower or as  
 2307 endorser, guarantor, or surety for any borrower, or otherwise,  
 2308 or any husband and wife, jointly or severally, to owe directly  
 2309 or contingently or both to the lender licensee at any time a sum  
 2310 of more than \$25,000 for principal.

2311           (2) However, if the proceeds of any loan of \$25,000 or less  
 2312 are used to discharge a preexisting debt of the borrower for  
 2313 goods or services owed directly to the person who provided the  
 2314 ~~such~~ goods or services, the lender licensee may accept from the  
 2315 ~~such~~ person a guaranty of payment of the principal of the ~~such~~  
 2316 loan with interest at a rate not exceeding 18 percent per  
 2317 annum. ~~and~~ The acceptance of one or more ~~such~~ guaranties of  
 2318 payment by the provider of goods or services in any aggregate  
 2319 amount does ~~shall~~ not affect the rights of the lender ~~such~~  
 2320 ~~licensee~~ to make the charges against the primary borrower



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2321 authorized by s. 516.031., ~~nor shall~~

2322 (3) (a) The limitation on the consideration upon the  
 2323 aggregate indebtedness of the same borrower in subsection (1)  
 2324 does not apply to the isolated acquisition directly or  
 2325 indirectly by purchase or by discount of bona fide obligations  
 2326 of a borrower.

2327 (b) However, if in the event a lender licensee makes a bona  
 2328 fide purchase of substantially all of the loans made under this  
 2329 chapter from another ~~licensee or other~~ lender not affiliated  
 2330 with the purchaser and the purchaser such licensee or other  
 2331 ~~lender~~ has an existing loan outstanding to one or more of the  
 2332 borrowers whose loans are purchased, the lender such licensee  
 2333 making the such purchase may ~~shall be entitled to~~ liquidate and  
 2334 collect the balances due on the such loans, including all lawful  
 2335 charges and interest at the rates or amounts agreed upon in the  
 2336 ~~such~~ loan contracts.

2337 Section 54. Section 516.22, Florida Statutes, is repealed.

2338 Section 55. Section 516.221, Florida Statutes, is repealed.

2339 Section 56. Section 516.23, Florida Statutes, is repealed.

2340 Section 57. Section 516.27, Florida Statutes, is repealed.

2341 Section 58. Subsections (3), (5), and (6) of section  
 2342 516.31, Florida Statutes, are amended to read:

2343 516.31 Consumer protection; certain negotiable instruments  
 2344 restricted; assigns subject to defenses; limitation on  
 2345 deficiency claims; cross collateral.—

2346 (3) LIMITATION ON DEFICIENCY CLAIMS.—If a creditor takes  
 2347 possession of property that ~~which~~ was collateral under a  
 2348 consumer credit transaction, the consumer is ~~shall~~ not be  
 2349 personally liable to the creditor for any unpaid balance of the

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2350 obligation unless the unpaid balance of the consumer's  
 2351 obligation at the time of default was \$2,000 or more. ~~If~~ When  
 2352 the unpaid balance is \$2,000 or more, the creditor may ~~shall be~~  
 2353 ~~entitled to~~ recover from the consumer the deficiency, if any,  
 2354 resulting from deducting the fair market value of the collateral  
 2355 from the unpaid balance due. In a proceeding for a deficiency,  
 2356 the fair market value of the collateral is ~~shall be~~ a question  
 2357 for the trier of fact. Periodically published trade estimates of  
 2358 the retail value of goods ~~shall~~, to the extent they are  
 2359 recognized in the particular trade or business, are ~~be~~ presumed  
 2360 to be the fair market value of the collateral.

2361 ~~(5) PURCHASERS OF RETAIL INSTALLMENT CONTRACTS MUST BE~~  
 2362 ~~LICENSED UNDER CHAPTER 520. A licensee under the Consumer~~  
 2363 ~~Finance Act who purchases or holds retail installment contracts~~  
 2364 ~~as defined in s. 520.31 in this state shall also be licensed~~  
 2365 ~~under chapter 520 as an Installment Sales Finance Act licensee.~~

2366 (5) ~~(6)~~ WAIVER.—A waiver by the buyer of any provision of  
 2367 provisions in this section is shall be void and unenforceable as  
 2368 contrary to public policy.

2369 Section 59. Section 516.32, Florida Statutes, is repealed.

2370 Section 60. Section 516.38, Florida Statutes, is created to  
 2371 read:

2372 516.38 Actions for damages.—A borrower who is injured by a  
 2373 violation of this chapter may bring an action to recover actual  
 2374 and punitive damages. If the borrower prevails in such action,  
 2375 the borrower is entitled to reasonable attorney fees and costs.  
 2376 The remedies provided in this section are in addition to any  
 2377 other remedies available to the borrower.

2378 Section 61. Section 520.02, Florida Statutes, is amended to

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2379 read:

2380 520.02 Definitions.—In this part act, unless the context or  
2381 subject matter otherwise requires, the term:

2382 ~~(1) "Branch" means any location, other than a licensee's~~  
2383 ~~principal place of business, at which a licensee operates or~~  
2384 ~~conducts business under this act or which a licensee owns or~~  
2385 ~~controls for the purpose of conducting business under this act.~~

2386 (1)~~(2)~~ "Cash price" means the price at which a seller, in  
2387 the ordinary course of business, offers to sell for cash the  
2388 property or service that is the subject of the transaction. At  
2389 the seller's option, the term "cash price" may include the price  
2390 of accessories, services related to the sale, service contracts,  
2391 and taxes and fees for license, title, and registration of the  
2392 motor vehicle. The term ~~"cash price"~~ does not include any  
2393 finance charge.

2394 ~~(3) "Commission" means the Financial Services Commission.~~

2395 ~~(4) "Control person" means an individual, partnership,~~  
2396 ~~corporation, trust, or other organization that possesses the~~  
2397 ~~power, directly or indirectly, to direct the management or~~  
2398 ~~policies of a company, whether through ownership of securities,~~  
2399 ~~by contract, or otherwise. A person is presumed to control a~~  
2400 ~~company if, with respect to a particular company, that person:~~

2401 ~~(a) Is a director, general partner, or officer exercising~~  
2402 ~~executive responsibility or having similar status or functions;~~

2403 ~~(b) Directly or indirectly may vote 10 percent or more of a~~  
2404 ~~class of a voting security or sell or direct the sale of 10~~  
2405 ~~percent or more of a class of voting securities; or~~

2406 ~~(c) In the case of a partnership, may receive upon~~  
2407 ~~dissolution or has contributed 10 percent or more of the~~

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2408 ~~capital.~~

2409       (2)~~(5)~~ "Down payment" means the amount, including the value  
2410 of any property used as a trade-in, paid to a seller to reduce  
2411 the cash price of goods or services purchased in a credit sale  
2412 transaction. A deferred portion of a down payment may be treated  
2413 as part of the down payment if it is payable not later than the  
2414 due date of the second otherwise regularly scheduled payment and  
2415 is not subject to a finance charge.

2416       (3)~~(6)~~ "Finance charge" means the cost of consumer credit  
2417 as a dollar amount. The term ~~"finance charge"~~ includes any  
2418 charge payable directly or indirectly by the buyer and imposed  
2419 directly or indirectly by the seller as an incident to or a  
2420 condition of the extension of credit. The term ~~"finance charge"~~  
2421 does not include any charge of a type payable in a comparable  
2422 cash transaction.

2423       (4)~~(7)~~ "Guaranteed asset protection product" means a loan,  
2424 lease, or retail installment contract term, or modification or  
2425 addendum to a loan, lease, or retail installment contract, under  
2426 which a creditor agrees to waive a customer's liability for  
2427 payment of some or all of the amount by which the debt exceeds  
2428 the value of the collateral. Such a product is not insurance for  
2429 purposes of the Florida Insurance Code. This subsection also  
2430 applies to all guaranteed asset protection products issued  
2431 before October 1, 2008.

2432       (5)~~(8)~~ "Holder" of a retail installment contract means the  
2433 retail seller of a motor vehicle retail installment contract or  
2434 an assignee of such contract.

2435       (6)~~(9)~~ "Mobile home" means a structure, transportable in  
2436 one or more sections, which is 8 body feet or more in width and

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2437 is 32 body feet or more in length, designed to be used as a  
2438 dwelling with or without a permanent foundation when connected  
2439 to the required utilities, and includes the plumbing, heating,  
2440 air-conditioning, and electrical systems contained therein.

2441 (7)~~(10)~~ "Motor vehicle" means any device or vehicle,  
2442 including automobiles, motorcycles, motor trucks, trailers,  
2443 mobile homes, and all other vehicles operated over the public  
2444 highways and streets of this state and propelled by power other  
2445 than muscular power, but excluding traction engines, road  
2446 rollers, implements of husbandry and other agricultural  
2447 equipment, and vehicles that ~~which~~ run only upon a track.

2448 (8)~~(11)~~ "Motor vehicle retail installment seller" or  
2449 "seller" means a person engaged in the business of selling motor  
2450 vehicles to retail buyers in retail installment transactions.

2451 ~~(12) "Office" means the Office of Financial Regulation of~~  
2452 ~~the commission.~~

2453 (9)~~(13)~~ "Official fees" means fees and charges prescribed  
2454 by law which actually are or will be paid to public officials  
2455 for determining the existence of, or for perfecting, releasing,  
2456 or satisfying, any security related to the credit transaction,  
2457 or the premium payable for any insurance in lieu of perfecting  
2458 any security interest otherwise required by the creditor in  
2459 connection with the transaction, if the premium does not exceed  
2460 the fees and charges that ~~which~~ would otherwise be payable to  
2461 public officials.

2462 ~~(14) "Person" means an individual, partnership,~~  
2463 ~~corporation, association, and any other group however organized.~~

2464 ~~(15) "Principal place of business" means the physical~~  
2465 ~~location designated on the licensee's application for licensure,~~

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2466 ~~unless otherwise designated as required by this chapter.~~

2467       (10)~~(16)~~ "Retail buyer" or "buyer" means a person who buys  
2468 a motor vehicle from a seller not principally for the purpose of  
2469 resale, and who executes a retail installment contract in  
2470 connection with the purchase ~~therewith~~ or a person who succeeds  
2471 to the rights and obligations of such person.

2472       (11)~~(17)~~ "Retail installment contract" or "contract" means  
2473 an agreement, entered into in this state, pursuant to which the  
2474 title to, or a lien upon the motor vehicle, which is the subject  
2475 matter of a retail installment transaction, is retained or taken  
2476 by a seller from a retail buyer as security, in whole or in  
2477 part, for the buyer's obligation. The term includes a  
2478 conditional sales contract and a contract for the bailment or  
2479 leasing of a motor vehicle by which the bailee or lessee  
2480 contracts to pay as compensation for its use a sum substantially  
2481 equivalent to or in excess of its value and by which it is  
2482 agreed that the bailee or lessee is bound to become, or for no  
2483 further or a merely nominal consideration, has the option of  
2484 becoming, the owner of the motor vehicle upon full compliance  
2485 with the provisions of the contract.

2486       (12)~~(18)~~ "Retail installment transaction" means any  
2487 transaction evidenced by a retail installment contract entered  
2488 into between a retail buyer and a seller in which ~~wherein~~ the  
2489 retail buyer buys a motor vehicle from the seller at a deferred  
2490 payment price payable in one or more deferred installments.

2491       (13)~~(19)~~ "Sales finance company" means a person engaged in  
2492 the business of purchasing retail installment contracts from one  
2493 or more sellers. The term includes, but is not limited to, a  
2494 bank or trust company, if so engaged. The term does not include

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2495 the pledge of an aggregate number of such contracts to secure a  
2496 bona fide loan thereon.

2497 ~~(20) Words in the singular include the plural and vice~~  
2498 ~~versa.~~

2499 Section 62. Section 520.03, Florida Statutes, is repealed.

2500 Section 63. Section 520.12, Florida Statutes, is amended to  
2501 read:

2502 520.12 Penalties.—

2503 ~~(1) Any person who willfully and intentionally violates any~~  
2504 ~~provision of s. 520.995 or engages in the business of a retail~~  
2505 ~~installment seller without obtaining a license as required by~~  
2506 ~~this part is guilty of a misdemeanor of the first degree,~~  
2507 ~~punishable as provided in s. 775.082 or s. 775.083.~~

2508 ~~(2) In the case of a willful violation of this part with~~  
2509 ~~respect to any retail installment sale, A the buyer may bring an~~  
2510 ~~action against a person who violates this part with respect to a~~  
2511 ~~retail installment sale recover from the person committing such~~  
2512 ~~violation, or may set off or counterclaim in any action against~~  
2513 ~~the buyer by such person, an amount equal to any finance charge~~  
2514 ~~and any fees charged to the buyer by reason of delinquency, plus~~  
2515 ~~attorney ~~attorney's~~ fees and costs incurred by the buyer to~~  
2516 ~~assert rights under this part.~~

2517 ~~(3) Section 520.12(2) does not apply to any violation of~~  
2518 ~~the requirement in s. 520.07(1)(c) that the seller deliver or~~  
2519 ~~mail to the buyer a copy of the contract signed by the seller,~~  
2520 ~~if the seller delivered to the buyer at the time the buyer~~  
2521 ~~signed the contract an exact copy of the contract that the buyer~~  
2522 ~~signed.~~

2523 Section 64. Section 520.31, Florida Statutes, is amended to

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2524 read:

2525 520.31 Definitions.—Unless otherwise clearly indicated by  
2526 the context, as used in this part, the term ~~the following words~~  
2527 ~~when used in this act, for the purposes of this act, shall have~~  
2528 ~~the meanings respectively ascribed to them in this section:~~

2529 ~~(1) "Branch" means any location, other than a licensee's~~  
2530 ~~principal place of business, at which a licensee operates or~~  
2531 ~~conducts business under this act or which a licensee owns or~~  
2532 ~~controls for the purpose of conducting business under this act.~~

2533 (1)~~(2)~~ "Cash price" means the price at which the seller, in  
2534 the ordinary course of business, offers to sell for cash the  
2535 property or service that is the subject of the transaction. At  
2536 the seller's option, the term ~~"cash price"~~ may include the price  
2537 of accessories, services related to the sale, service contracts,  
2538 and taxes. The term ~~"cash price"~~ does not include any finance  
2539 charge.

2540 ~~(3) "Commission" means the Financial Services Commission.~~

2541 ~~(4) "Control person" means an individual, partnership,~~  
2542 ~~corporation, trust, or other organization that possesses the~~  
2543 ~~power, directly or indirectly, to direct the management or~~  
2544 ~~policies of a company, whether through ownership of securities,~~  
2545 ~~by contract, or otherwise. A person is presumed to control a~~  
2546 ~~company if, with respect to a particular company, that person:~~

2547 ~~(a) Is a director, general partner, or officer exercising~~  
2548 ~~executive responsibility or having similar status or functions;~~

2549 ~~(b) Directly or indirectly has the right to vote 10 percent~~  
2550 ~~or more of a class of a voting security or has the power to sell~~  
2551 ~~or direct the sale of 10 percent or more of a class of voting~~  
2552 ~~securities; or~~



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2553 ~~(c) In the case of a partnership, has the right to receive~~  
2554 ~~upon dissolution or has contributed 10 percent or more of the~~  
2555 ~~capital.~~

2556 (2)~~(5)~~ "Down payment" means the amount, including the value  
2557 of any property used as a trade-in, paid to a seller to reduce  
2558 the cash price of goods or services purchased in a credit sale  
2559 transaction. A deferred portion of a down payment may be treated  
2560 as part of the down payment if it is payable not later than the  
2561 due date of the second otherwise regularly scheduled payment and  
2562 is not subject to a finance charge.

2563 (3)~~(6)~~ "Finance charge" means the cost of consumer credit  
2564 as a dollar amount. The term ~~"finance charge"~~ includes any  
2565 charge payable directly or indirectly by the buyer and imposed  
2566 directly or indirectly by the seller as an incident to or a  
2567 condition of the extension of credit. The term ~~"finance charge"~~  
2568 does not include any charge of a type payable in a comparable  
2569 cash transaction.

2570 (4)~~(7)~~ "Goods" means all personalty if ~~when~~ purchased  
2571 primarily for personal, family, or household use, including  
2572 certificates or coupons issued by a retail seller exchangeable  
2573 for personalty or services, but not including other choses in  
2574 action, personalty sold for commercial or industrial use, money,  
2575 motor vehicles or construction, mining, or quarrying equipment.  
2576 The term ~~"goods"~~ includes such personalty that ~~which~~ is  
2577 furnished or used, at the time of sale or subsequently, in the  
2578 modernization, rehabilitation, repair, alteration, improvement,  
2579 or construction of real property as to become a part of the real  
2580 property thereof, whether or not severable from the real  
2581 property therefrom.

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2582       (5)~~(8)~~ "Holder" means the retail seller or an assignee of  
2583 the retail seller.

2584       (6)~~(9)~~ "Motor vehicle" means any device or vehicle operated  
2585 over the public highways and streets of this state and propelled  
2586 by other than muscular power, but does not include traction  
2587 engines, road rollers, implements of husbandry and other  
2588 agricultural equipment, and such vehicles as run only upon a  
2589 track.

2590       ~~(10) "Office" means the Office of Financial Regulation of  
2591 the commission.~~

2592       (7)~~(11)~~ "Official fees" means fees and charges prescribed  
2593 by law which actually are or will be paid to public officials  
2594 for determining the existence of, or for perfecting, releasing,  
2595 or satisfying, any security related to the credit transaction or  
2596 the premium payable for any insurance in lieu of perfecting any  
2597 security interest otherwise required by the creditor in  
2598 connection with the transaction, if the premium does not exceed  
2599 the fees and charges that ~~which~~ would otherwise be payable to  
2600 public officials.

2601       ~~(12) "Principal place of business" means the physical  
2602 location designated on the licensee's application for licensure,  
2603 unless otherwise designated as required by this chapter.~~

2604       (8)~~(13)~~ "Retail buyer" or "buyer" means a person who buys  
2605 goods or obtains services from a retail seller in a retail  
2606 installment transaction and not principally for the purpose of  
2607 resale.

2608       (9)~~(14)~~ "Retail installment contract" or "contract" means  
2609 an instrument or instruments reflecting one or more retail  
2610 installment transactions entered into in this state pursuant to

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2611 which goods or services may be paid for in installments. It does  
2612 not include a revolving account or an instrument reflecting a  
2613 sale pursuant thereto.

2614 (10)~~(15)~~ "Retail installment transaction" or "transaction"  
2615 means a contract to sell or furnish or the sale of or the  
2616 furnishing of goods or services by a retail seller to a retail  
2617 buyer pursuant to a retail installment contract or a revolving  
2618 account.

2619 (11)~~(16)~~ "Retail seller" or "seller" means a person  
2620 regularly engaged in, and whose business consists to a  
2621 substantial extent of, selling goods to a retail buyer. The term  
2622 also includes a seller who regularly grants credit to retail  
2623 buyers pursuant to a retail installment contract or a revolving  
2624 account for the purpose of purchasing goods or services from any  
2625 other person.

2626 (12)~~(17)~~ "Revolving account" or "account" means an  
2627 instrument or instruments prescribing the terms of retail  
2628 installment transactions that ~~which~~ may be made thereafter from  
2629 time to time pursuant thereto, under which the buyer's total  
2630 unpaid balance thereunder, whenever incurred, is payable in  
2631 installments over a period of time and under the terms of which  
2632 a finance charge is to be computed in relation to the buyer's  
2633 unpaid balance from time to time.

2634 (13)~~(18)~~ "Sales finance company" means a person engaged in  
2635 the business of purchasing retail installment contracts from one  
2636 or more retail sellers. The term includes, but is not limited  
2637 to, a bank or trust company, if so engaged. The term does not  
2638 include the pledgee of an aggregate number of such contracts to  
2639 secure a bona fide loan thereon.

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2640        ~~(14)~~~~(19)~~ "Services" means work, labor, or other personal  
2641 services furnished for personal, family, or household use,  
2642 including but not limited to the delivery, installation,  
2643 servicing, repair, or improvement of goods, and includes such  
2644 work or labor furnished in connection with the modernization,  
2645 rehabilitation, repair, alteration, improvement, or construction  
2646 upon or in connection with real property.

2647        Section 65. Section 520.32, Florida Statutes, is repealed.

2648        Section 66. Subsections (6) through (14) of section 520.34,  
2649 Florida Statutes, are amended to read:

2650        520.34 Retail installment contracts.—

2651        (6) (a) Notwithstanding ~~the provisions of~~ any other law, the  
2652 seller under a retail installment contract may charge, receive,  
2653 and collect a finance charge that ~~which~~ may not exceed the rate  
2654 of following rates: on the amount financed, \$12 per \$100 per  
2655 year on the amount financed. The finance charge under this  
2656 subsection shall be computed on the amount financed of each  
2657 transaction, as determined under paragraph (2) (a), on contracts  
2658 payable in successive monthly payments substantially equal in  
2659 amount, for the period from the date of the contract to and  
2660 including the date when the final installment under the contract  
2661 ~~thereunder~~ is payable. If ~~When~~ a retail installment contract is  
2662 payable other than in successive monthly payments substantially  
2663 equal in amount, the finance charge may be at the effective  
2664 rates provided in this subsection, having due regard for the  
2665 schedule of payments. The finance charge may be computed on the  
2666 basis of a full month for any fractional-month period in excess  
2667 of 10 days. Notwithstanding the other provisions of this  
2668 subsection, a minimum finance charge not in excess of the

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2669 following amounts may be charged on any retail installment  
2670 contract: \$12 on any retail installment contract involving an  
2671 initial amount financed of \$50 or more; \$7.50 on a retail  
2672 installment contract involving an initial amount financed of  
2673 more than \$25 and less than \$50; and \$5 on a retail installment  
2674 contract involving an initial amount financed of \$25 or less.

2675 (b) The holder of a retail installment contract, upon  
2676 request by the buyer, may extend the scheduled due date of all  
2677 or any part of any installment. If ~~In the event~~ the unpaid time  
2678 balance of the contract is extended, the holder may, at his or  
2679 her election, charge and collect for each 30 days' extension an  
2680 amount not to exceed one-twelfth of the maximum allowable rate  
2681 per annum of the unpaid balance at the time of extension.

2682 (7) A ~~No~~ retail installment contract may not ~~shall~~ be  
2683 signed by the buyer if ~~when~~ it contains blank spaces to be  
2684 filled in after it has been signed, except that, if delivery of  
2685 the goods or services is not made at the time of execution of  
2686 the contract, the identification of the goods or services and  
2687 the due date of the first installment may be left blank and  
2688 later inserted by the seller in the seller's counterpart of the  
2689 contract after the contract ~~it~~ has been signed by the buyer. The  
2690 buyer's written acknowledgment, conforming to the requirements  
2691 of paragraph (1)(c), of delivery of a copy of a contract is  
2692 ~~shall be~~ presumptive proof, in any action or proceeding, of ~~such~~  
2693 delivery of the goods or services and that the contract, when  
2694 signed, did not contain any blank spaces as ~~herein~~ provided in  
2695 this subsection.

2696 (8) The seller under any retail installment contract shall,  
2697 within 30 days after execution of the contract, deliver or mail

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2698 ~~or cause to be delivered or mailed~~ to the buyer at his or her  
2699 ~~aforsaid~~ address shown on the contract any policy ~~or policies~~  
2700 of insurance the seller has agreed to purchase in connection  
2701 with the contract therewith, or ~~in lieu thereof~~ a certificate ~~or~~  
2702 ~~certificates~~ of the such insurance. The amount, if any, included  
2703 for insurance may ~~shall~~ not exceed the applicable premiums  
2704 chargeable in accordance with the rates filed with the Office of  
2705 Insurance Regulation ~~of the commission~~; if any such insurance is  
2706 canceled, unearned insurance premium refunds and any unearned  
2707 finance charges thereon received by the holder shall, at his or  
2708 her option, be credited to the final maturing installments of  
2709 the contract or paid to the buyer, except to the extent applied  
2710 toward the payment for similar insurance protecting the  
2711 interests of the seller and the holder or either of them. The  
2712 finance charge on the original transaction shall be separately  
2713 computed:

2714 (a) With the premium for the canceled or adjusted insurance  
2715 included in the "amount financed"; and

2716 (b) With the premium for the canceled insurance or the  
2717 amount of the premium adjustment excluded from the "amount  
2718 financed."

2719  
2720 The difference in the finance charge resulting from these  
2721 computations shall be the portion of the finance charge  
2722 attributable to the canceled or adjusted insurance, and the  
2723 unearned portion thereof shall be determined by the use of the  
2724 rule of 78ths. "Cancellation of insurance" occurs at such time  
2725 as the seller or holder receives from the insurance carrier the  
2726 proper refund of unearned insurance premiums. ~~Nothing in This~~

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2727 section does not ~~act shall~~ impair or abrogate the right of a  
2728 buyer to procure insurance from an agent and company of his or  
2729 her own selection, as provided by the insurance laws of this  
2730 state. This section does not; ~~and nothing contained in this act~~  
2731 ~~shall~~ modify, alter, or repeal any of the insurance laws of this  
2732 state.

2733 (9) If the buyer ~~se~~ requests, the holder shall give ~~or~~  
2734 ~~forward to~~ the buyer a receipt for any payment when made in  
2735 cash. At any time after the execution of a contract, but not  
2736 later than 2 months after the last payment ~~thereunder~~, the  
2737 holder shall, upon written request of the buyer, give or forward  
2738 to the buyer a written statement of the dates and amounts of  
2739 payments and the total amount, if any, unpaid ~~thereunder~~. The  
2740 ~~Such a~~ statement shall be supplied by the holder once without  
2741 charge; if any additional statement is requested by the buyer,  
2742 the holder may impose ~~shall supply such statement to the buyer~~  
2743 ~~at~~ a charge not exceeding \$1 for each additional statement ~~se~~  
2744 supplied.

2745 (10) After payment of all sums for which the buyer is  
2746 obligated under a contract, and upon written demand made by the  
2747 buyer, the holder shall deliver or mail to the buyer, at his or  
2748 her last known address, one or more good and sufficient  
2749 instruments to acknowledge payment in full and shall release all  
2750 security in the goods.

2751 (11) Notwithstanding the provisions of any retail  
2752 installment contract to the contrary, any buyer may prepay in  
2753 full at any time before maturity the unpaid balance of any  
2754 retail installment contract and in so paying such unpaid balance  
2755 shall receive a refund credit thereon for such anticipation of

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2756 payments. The amount of the ~~such~~ refund shall represent at least  
 2757 as great a proportion of the finance charge, after first  
 2758 deducting therefrom an acquisition cost of \$15, as the sum of  
 2759 the monthly balances beginning 1 month after prepayment is made  
 2760 bears to the sum of all the monthly balances under the schedule  
 2761 of payments in the contract. If ~~When~~ the amount of the ~~such~~  
 2762 refund credit is less than \$1, no refund need be made.

2763 (12) The seller may ~~shall~~ not request or accept a  
 2764 certificate of completion signed by the buyer before ~~prior to~~  
 2765 the actual delivery of the goods and completion of the work to  
 2766 be performed under the contract.

2767 ~~(13) As amended by chapter 79-592, Laws of Florida, chapter~~  
 2768 ~~79-274, Laws of Florida, which amended subsection (5):~~

2769 ~~(a) Shall apply only to loans, advances of credit, or lines~~  
 2770 ~~of credit made on or subsequent to July 1, 1979, and to loans,~~  
 2771 ~~advances of credit, or lines of credit made prior to that date~~  
 2772 ~~if the lender has the legal right to require full payment or to~~  
 2773 ~~adjust or modify the interest rate, by renewal, assumption,~~  
 2774 ~~reaffirmation, contract, or otherwise; and~~

2775 ~~(b) Shall not be construed as diminishing the force and~~  
 2776 ~~effect of any laws applying to loans, advances of credit, or~~  
 2777 ~~lines of credit, other than to those mentioned in paragraph (a),~~  
 2778 ~~completed prior to July 1, 1979.~~

2779 (13) ~~(14)~~ The seller under a retail installment contract may  
 2780 collect a \$10 processing fee for each retail installment  
 2781 contract that is approved and activated. Such processing fee is  
 2782 ~~shall~~ not be considered interest or finance charges pursuant to  
 2783 chapter 687.

2784 Section 67. Section 520.39, Florida Statutes, is amended to



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2785 read:

2786 520.39 Penalties.—

2787 ~~(1) Any person who willfully and intentionally violates any~~  
 2788 ~~provision of s. 520.995 or engages in the business of a retail~~  
 2789 ~~seller engaging in retail installment transactions without~~  
 2790 ~~obtaining a license as required by this part is guilty of a~~  
 2791 ~~misdemeanor of the first degree, punishable as provided in s.~~  
 2792 ~~775.082 or s. 775.083.~~

2793 ~~(2) In the case of a willful violation of this part with~~  
 2794 ~~respect to any retail installment transaction, A the buyer may~~  
 2795 bring an action against a person who violates this part with  
 2796 respect to a retail installment transaction ~~recover from the~~  
 2797 ~~person committing such violation, or may set off or counterclaim~~  
 2798 ~~in any action against the buyer by such person, an amount equal~~  
 2799 ~~to any finance charge and any fees charged to the buyer by~~  
 2800 ~~reason of delinquency, plus attorney~~ attorney's ~~fees and costs~~  
 2801 ~~incurred by the buyer to assert rights under this part.~~

2802 Section 68. Section 520.41, Florida Statutes, is repealed.2803 Section 69. Section 520.52, Florida Statutes, is repealed.

2804 Section 70. Section 520.57, Florida Statutes, is amended to  
 2805 read:

2806 520.57 Penalties.—

2807 ~~(1) Any person who willfully and intentionally violates any~~  
 2808 ~~provision of s. 520.995 or engages in the business of a sales~~  
 2809 ~~finance company without obtaining a license is guilty of a~~  
 2810 ~~misdemeanor of the first degree, punishable as provided in s.~~  
 2811 ~~775.082 or s. 775.083.~~

2812 ~~(2) In the case of a willful violation of this part with~~  
 2813 ~~respect to a retail installment transaction, A the buyer may~~

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2814 bring an action against a person who violates this part with  
 2815 respect to a retail installment transaction ~~recover from the~~  
 2816 ~~person committing such violation,~~ or may set off or counterclaim  
 2817 in any action against the buyer by such person, an amount equal  
 2818 to any finance charge and any fees charged to the buyer by  
 2819 reason of delinquency, plus attorney ~~attorney's~~ fees and costs  
 2820 incurred by the buyer to assert rights under this part.

2821 Section 71. Section 520.61, Florida Statutes, is amended to  
 2822 read:

2823 520.61 Definitions.—As used in this part, the term ~~act~~:

2824 (1) "Banking institution" means any bank, bank and trust  
 2825 company, trust company, or any national banking association  
 2826 organized and doing business under the provisions of any state  
 2827 or of the United States.

2828 ~~(2) "Branch" means any location, other than a licensee's~~  
 2829 ~~principal place of business, at which a licensee operates or~~  
 2830 ~~conducts business under this act or which a licensee owns or~~  
 2831 ~~controls for the purpose of conducting business under this act.~~

2832 (2)~~(3)~~ "Business day" means all calendar days except  
 2833 Sundays and the following legal public holidays: New Year's Day,  
 2834 January 1; Birthday of Dr. Martin Luther King, Jr., January 15;  
 2835 Washington's Birthday, the third Monday in February; Memorial  
 2836 Day, the last Monday in May; Independence Day, July 4; Labor  
 2837 Day, the first Monday in September; Columbus Day, the second  
 2838 Monday in October; Veterans' Day, November 11; Thanksgiving Day,  
 2839 the fourth Thursday in November; and Christmas Day, December 25.

2840 (3)~~(4)~~ "Cash price" means the price at which a home  
 2841 improvement finance seller, in the ordinary course of business,  
 2842 offers to sell for cash the property or service that is the

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2843 subject of the transaction. At the seller's option, the term  
2844 ~~"cash price"~~ may include the price of accessories, services  
2845 related to the sale, service contracts, and taxes. The term  
2846 ~~"cash price"~~ does not include any finance charge.

2847 ~~(5) "Commission" means the Financial Services Commission.~~

2848 ~~(6) "Control person" means an individual, partnership,~~  
2849 ~~corporation, trust, or other organization that possesses the~~  
2850 ~~power, directly or indirectly, to direct the management or~~  
2851 ~~policies of a company, whether through ownership of securities,~~  
2852 ~~by contract, or otherwise. A person is presumed to control a~~  
2853 ~~company if, with respect to a particular company, that person:~~

2854 ~~(a) Is a director, general partner, or officer exercising~~  
2855 ~~executive responsibility or having similar status or functions;~~

2856 ~~(b) Directly or indirectly may vote 10 percent or more of a~~  
2857 ~~class of a voting security or sell or direct the sale of 10~~  
2858 ~~percent or more of a class of voting securities; or~~

2859 ~~(c) In the case of a partnership, may receive upon~~  
2860 ~~dissolution or has contributed 10 percent or more of the~~  
2861 ~~capital.~~

2862 (4)~~(7)~~ "Debt consolidation" means any money advanced to an  
2863 owner or the owner's assignee in any connection with a home  
2864 improvement contract.

2865 (5)~~(8)~~ "Down payment" means the amount paid in money and  
2866 goods to the home improvement finance seller and allowances  
2867 given by the home improvement finance seller to the buyer  
2868 pursuant to a home improvement contract.

2869 (6)~~(9)~~ "Finance charge" means the cost of consumer credit  
2870 as a dollar amount. The term ~~"finance charge"~~ includes any  
2871 charge payable directly or indirectly by the buyer and imposed

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2872 directly or indirectly by the seller as an incident to or a  
 2873 condition of the extension of credit. The term ~~"finance charge"~~  
 2874 does not include any charge of a type payable in a comparable  
 2875 cash transaction.

2876 (7) ~~(10)~~ "Goods" means all personal chattels that ~~which~~ are  
 2877 furnished or used in home improvement.

2878 (8) ~~(11)~~ "Holder" of a home improvement contract or related  
 2879 instrument means the home improvement finance seller or assignee  
 2880 of the holder ~~thereof~~.

2881 (9) ~~(12)~~ "Home improvement" means repair, replacement,  
 2882 remodeling, alteration, conversion, modernization, or  
 2883 improvement of, or addition to, any land or building that ~~which~~  
 2884 is to be used as a single-family residence or dwelling place if  
 2885 ~~when~~ such construction is done pursuant to a home improvement  
 2886 contract and a security interest in the real property is  
 2887 retained. The term ~~"Home improvement"~~ does not include:

2888 (a) The construction of a new home building or work done by  
 2889 a contractor or seller in compliance with a guarantee of  
 2890 completion of a new building project; or

2891 (b) The sale of goods or materials by a seller who does not  
 2892 arrange ~~neither arranges~~ to perform or who does not perform ~~nor~~  
 2893 ~~performs~~ directly or indirectly any work or labor in connection  
 2894 with the installation of or application of the goods or  
 2895 materials.

2896 (10) ~~(13)~~ "Home improvement contract" or "contract" means a  
 2897 written agreement contained in one or more documents between a  
 2898 home improvement finance seller and an owner for the performance  
 2899 of a home improvement and includes all labor, materials, and  
 2900 services to be furnished if ~~when~~ all or part of the contract

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2901 price is to be paid in installments over a period of time  
2902 greater than 90 days.

2903 (11)~~(14)~~ "Home improvement finance seller" or "seller"  
2904 means any person other than a bona fide employee of the owner  
2905 who directly or indirectly enters into two or more home  
2906 improvement contracts, each of which was for consideration of  
2907 \$500 or more, in any calendar year.

2908 (12)~~(15)~~ "Home improvement sale" or "sale" means the sale  
2909 of goods and furnishing of services or the furnishing of  
2910 services by a home improvement finance seller to an owner  
2911 pursuant to a home improvement contract.

2912 ~~(16) "Office" means the Office of Financial Regulation of~~  
2913 ~~the commission.~~

2914 (13)~~(17)~~ "Official fees" means fees actually paid to the  
2915 appropriate public officer for obtaining any permit; filing,  
2916 recording, or releasing any judgment, mortgage, or other lien;  
2917 or perfecting any security in connection with a home improvement  
2918 contract.

2919 (14)~~(18)~~ "Owner," "retail buyer," or "buyer" means any  
2920 homeowner, tenant, or any other person who orders, contracts  
2921 for, or purchases the services of a home improvement finance  
2922 seller or the person entitled to the performance of the work of  
2923 a home improvement finance seller pursuant to a home improvement  
2924 contract.

2925 (15)~~(19)~~ "Person" means an individual, partnership,  
2926 association, business, corporation, banking institution,  
2927 nonprofit corporation, common-law trust, joint stock company, or  
2928 any other group of individuals, however organized.

2929 (16)~~(20)~~ "Principal place of business" means the physical

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2930 location designated on the licensee's application for licensure,  
 2931 unless otherwise designated as required by this chapter.

2932 (17)~~(21)~~ "Retail installment transaction," "home  
 2933 improvement finance transaction," or "transaction" means a  
 2934 contract to sell or furnish or the sale of or the furnishing of  
 2935 goods or services by a home improvement finance seller to an  
 2936 owner.

2937 (18)~~(22)~~ "Sales finance company" means any person who  
 2938 directly or indirectly purchases, acquires, solicits, or  
 2939 arranges for the acquisition of home improvement contracts or  
 2940 connected obligations by purchase, discount, pledge, or  
 2941 otherwise.

2942 (19)~~(23)~~ "Services" means labor furnished for home  
 2943 improvement.

2944 Section 72. Section 520.63, Florida Statutes, is repealed.

2945 Section 73. Section 520.68, Florida Statutes, is repealed.

2946 Section 74. Section 520.69, Florida Statutes, is repealed.

2947 Section 75. Section 520.76, Florida Statutes, is amended to  
 2948 read:

2949 520.76 Insurance provisions, procurement, rates.—

2950 (1) The premium paid for any group credit life or other  
 2951 insurance shall be included in the home improvement contract.

2952 (2) The home improvement contract shall state which party  
 2953 is to procure insurance.

2954 (3) The amount, if any, included for the ~~such~~ insurance may  
 2955 ~~shall~~ not exceed the applicable premiums chargeable in  
 2956 accordance with rates filed with the Office of Insurance  
 2957 Regulation ~~of the commission~~. If any such group credit life or  
 2958 other insurance is canceled, the refund for unearned insurance

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2959 premiums received or receivable by the holder of the home  
2960 improvement contract or the excess of the amount included in the  
2961 contract for insurance over the premiums paid or payable by the  
2962 holder of the contract together with, in either case, the  
2963 unearned portion of the finance charge or other interest  
2964 applicable thereto shall be credited to the final maturing  
2965 installments of the home improvement contract. However, the ~~no~~  
2966 ~~such~~ credit need not be made if the amount is ~~would be~~ less than  
2967 \$1.

2968 (4) If the insurance is to be procured by the home  
2969 improvement finance seller or holder, he or she shall, within 30  
2970 days after delivery of the goods and furnishing of the services  
2971 under the home improvement contract, deliver or mail to the  
2972 owner at his or her address as specified in the contract a copy  
2973 of the policy or policies of insurance or a certificate or  
2974 certificates of the insurance procured.

2975 Section 76. Section 520.81, Florida Statutes, is amended to  
2976 read:

2977 520.81 Completion certificate.—

2978 ~~(1)~~ Upon completion of the home improvement for which the  
2979 owner and the home improvement finance seller contracted, the  
2980 seller shall prepare a certificate that ~~which~~ shall be signed by  
2981 both parties.

2982 ~~(2) The form of the certificate shall be prescribed by the~~  
2983 ~~commission.~~

2984 Section 77. Section 520.98, Florida Statutes, is amended to  
2985 read:

2986 520.98 Penalties.—

2987 ~~(1) Any person who willfully and intentionally violates any~~

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2988 ~~provision of s. 520.995 or engages in the business of a home~~  
2989 ~~improvement finance seller or a sales finance company without~~  
2990 ~~obtaining a license as required by this act is guilty of a~~  
2991 ~~misdemeanor of the first degree, punishable as provided in s.~~  
2992 ~~775.082 or s. 775.083.~~

2993 ~~(2) In the case of a willful violation of this act with~~  
2994 ~~respect to any home improvement sale or contract, An~~ the owner  
2995 may bring an action against a person who violates this part with  
2996 respect to a home improvement contract ~~recover from the person~~  
2997 ~~committing such violation,~~ or may set off or counterclaim in any  
2998 action against the owner by such person, an amount equal to any  
2999 finance charge and any fees charged to the owner by reason of  
3000 delinquency, plus attorney ~~attorney's~~ fees and costs incurred by  
3001 the owner to assert rights under this part.

3002 Section 78. Part V of chapter 520, Florida Statutes,  
3003 consisting of ss. 520.993, 520.994, 520.995, 520.996, 520.9965,  
3004 520.997, 520.998, and 520.999, Florida Statutes, is repealed.

3005 Section 79. All of the powers, duties, functions, records,  
3006 personnel, and property; unexpended balances of appropriations,  
3007 allocations, and other funds; administrative authority;  
3008 administrative rules; pending issues; and existing contracts of  
3009 the Office of Financial Regulation of the Financial Services  
3010 Commission for the administration of chapter 537, Florida  
3011 Statutes, relating to title loans, are transferred by a type two  
3012 transfer, pursuant to s. 20.06(2), Florida Statutes, to the  
3013 Department of Business and Professional Regulation.

3014 Section 80. Section 537.001, Florida Statutes, is amended  
3015 to read:

3016 537.001 Short title.—This chapter act may be cited as the



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3017 "Florida Title Loan Act."

3018 Section 81. Section 537.002, Florida Statutes, is amended  
3019 to read:

3020 537.002 Legislative intent.—The Legislature intends that  
3021 title loans to consumers be regulated by this chapter. ~~It is the~~  
3022 ~~intent of the Legislature in the creation of this chapter that~~  
3023 ~~title loans to consumers be regulated by the provisions of this~~  
3024 ~~act. The provisions of This chapter supersedes act supersede any~~  
3025 other provisions of state law affecting title loans to the  
3026 extent of any conflict.

3027 Section 82. Section 537.003, Florida Statutes, is amended  
3028 to read:

3029 537.003 Definitions.—As used in this chapter act, unless  
3030 the context otherwise requires, the term:

3031 (1) "Commercially reasonable" has the same meaning as used  
3032 in part V of chapter 679. In addition, nonpublic sales or  
3033 disposal of personal property between a title loan lender and  
3034 any business affiliates of a title loan lender or a member of a  
3035 title loan lender's family is ~~are~~ presumed not to be made in a  
3036 commercially reasonable manner.

3037 ~~(2) "Commission" means the Financial Services Commission.~~

3038 ~~(2)-(3)~~ (2) "Consumer" means an individual borrowing money for  
3039 personal, family, or household purposes.

3040 (3) "Department" means the Department of Business and  
3041 Professional Regulation.

3042 ~~(4) "Office" means the Office of Financial Regulation of~~  
3043 ~~the commission.~~

3044 ~~(4)-(5)~~ (4) "Executive officer" means the president, chief  
3045 executive officer, chief financial officer, chief operating

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3046 officer, executive vice president, senior vice president,  
3047 secretary, and treasurer.

3048 (5)~~(6)~~ "Identification" means a government-issued  
3049 photographic identification.

3050 (6)~~(7)~~ "Interest" means the cost of obtaining a title loan  
3051 and includes any profit or advantage of any kind which  
3052 ~~whatsoever that~~ a title loan lender may charge, contract for,  
3053 collect, receive, or in any way obtain as a result of a title  
3054 loan.

3055 (7)~~(8)~~ "License" means a permit issued under this chapter  
3056 ~~act~~ to make or service title loans in accordance with this  
3057 chapter act at a single title loan office.

3058 (8)~~(9)~~ "Licensee" means a person who is licensed as a title  
3059 loan lender.

3060 (9)~~(10)~~ "Loan property" means any motor vehicle certificate  
3061 of title that is deposited with a title loan lender as a  
3062 security for a title loan in the course of the title loan  
3063 lender's business.

3064 (10)~~(11)~~ "Motor vehicle" means an automobile, motorcycle,  
3065 mobile home, truck, trailer, semitrailer, truck tractor and  
3066 semitrailer combination, or any other vehicle operated on the  
3067 public highways and streets of this state, used to transport  
3068 persons or property, and propelled by power other than muscular  
3069 power, but excluding a vehicle that ~~which~~ runs only upon a track  
3070 and a mobile home that is the primary residence of the owner.

3071 (11)~~(12)~~ "Title loan" or "loan" means a loan of money to a  
3072 consumer secured by bailment of a certificate of title to a  
3073 motor vehicle, except such loan made by a person licensed under  
3074 chapter 516, chapter 520, chapter 655, chapter 657, chapter 658,

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3075 chapter 660, chapter 663, chapter 665, or chapter 667 or a  
3076 person who complies with s. 687.03.

3077 (12)~~(13)~~ "Title loan agreement" or "agreement" means a  
3078 written agreement in which a title loan lender agrees to make a  
3079 title loan to a borrower.

3080 (13)~~(14)~~ "Title loan lender" or "lender" means any person  
3081 who engages in the business of making or servicing title loans.

3082 (14)~~(15)~~ "Title loan office" means the location at which,  
3083 or premises from which, a title loan lender regularly conducts  
3084 business under this chapter or any other location that is held  
3085 out to the public as a location at which a lender makes or  
3086 services title loans.

3087 (15)~~(16)~~ "Titled personal property" means a motor vehicle  
3088 that has as evidence of ownership a state-issued certificate of  
3089 title except for a mobile home that is the primary residence of  
3090 the borrower.

3091 (16)~~(17)~~ "Ultimate equitable owner" means a person who,  
3092 directly or indirectly, owns or controls an ownership interest  
3093 in a corporation, a foreign corporation, an alien business  
3094 organization, or any other form of business organization,  
3095 regardless of whether such person owns or controls such  
3096 ownership interest through one or more persons or one or more  
3097 proxies, powers of attorney, nominees, corporations,  
3098 associations, partnerships, trusts, joint stock companies, or  
3099 other entities or devices, or any combination thereof.

3100 Section 83. Subsections (1), (3), (5), (6), (8), (9), and  
3101 (10) of section 537.004, Florida Statutes, are amended to read:  
3102 537.004 License required; license fees.—

3103 (1) A person may not act as a title loan lender or own or

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3104 operate a title loan office unless such person has an active  
3105 title loan lender license issued by the department ~~office~~ under  
3106 this chapter ~~act~~. A title loan lender may not own or operate  
3107 more than one title loan office unless the lender obtains a  
3108 separate title loan lender license for each title loan office.

3109 (3) If the department ~~office~~ determines that an application  
3110 should be approved, the department ~~office~~ shall issue a license  
3111 for a period not to exceed 2 years.

3112 (5) Each license must be conspicuously displayed at the  
3113 title loan office. When a licensee wishes to move a title loan  
3114 office to another location, the licensee shall provide prior  
3115 written notice to the department ~~office~~.

3116 (6) A license issued pursuant to this chapter ~~act~~ is not  
3117 transferable or assignable.

3118 (8) Whenever a person or a group of persons, directly or  
3119 indirectly or acting by or through one or more persons, proposes  
3120 to purchase or acquire a 50 percent or more interest in a  
3121 licensee, such person or group shall submit an initial  
3122 application for licensure under this chapter before ~~act prior to~~  
3123 such purchase or acquisition.

3124 (9) The department ~~commission~~ may adopt rules to allow for  
3125 electronic filing of applications, fees, and forms required by  
3126 this chapter ~~act~~.

3127 ~~(10) All moneys collected by the office under this act~~  
3128 ~~shall be deposited into the Regulatory Trust Fund of the office.~~

3129 Section 84. Section 537.005, Florida Statutes, is amended  
3130 to read:

3131 537.005 Application for license.-

3132 (1) A verified application for licensure under this chapter

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3133 ~~act~~, in the form prescribed by department ~~commission~~ rule,  
3134 shall:

3135 (a) Contain the name and the residence and business address  
3136 of the applicant. If the applicant is other than a natural  
3137 person, the application shall contain the name and the residence  
3138 and business address of each ultimate equitable owner of 10  
3139 percent or more of such entity and each director, general  
3140 partner, and executive officer of such entity.

3141 (b) State whether any individual identified in paragraph  
3142 (a) has, within the last 10 years, pleaded nolo contendere to,  
3143 or has been convicted or found guilty of, a felony, regardless  
3144 of whether adjudication was withheld.

3145 (c) Identify the county and municipality with the street  
3146 and number or location where the business is to be conducted.

3147 (d) Contain additional information as the department  
3148 ~~commission~~ determines by rule to be necessary to ensure  
3149 compliance with this chapter ~~act~~.

3150 (2) Notwithstanding subsection (1), the application need  
3151 not state the full name and address of each officer, director,  
3152 and shareholder if the applicant is owned directly or  
3153 beneficially by a person who as an issuer has a class of  
3154 securities registered pursuant to s. 12 of the Securities  
3155 Exchange Act of 1934 or, pursuant to s. 13 or s. 15(d) of such  
3156 act, is an issuer of securities which is required to file  
3157 reports with the Securities and Exchange Commission, if the  
3158 person files with the department ~~office~~ any information,  
3159 documents, and reports required by such act to be filed with the  
3160 Securities and Exchange Commission.

3161 (3) An applicant for licensure shall file with the

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3162 department ~~office~~ a bond, in the amount of \$100,000 for each  
3163 license, with a surety company qualified to do business in this  
3164 state. However, ~~in no event shall~~ the aggregate amount of the  
3165 bond required for a single title loan lender may not exceed \$1  
3166 million. In lieu of the bond, the applicant may establish a  
3167 certificate of deposit or an irrevocable letter of credit in a  
3168 financial institution, as defined in s. 655.005, in the amount  
3169 of the bond. The original bond, certificate of deposit, or  
3170 letter of credit shall be filed with the department ~~office~~, and  
3171 the department ~~office~~ shall be the beneficiary to that document.  
3172 The bond, certificate of deposit, or letter of credit shall be  
3173 in favor of the department ~~office~~ for the use and benefit of any  
3174 consumer who is injured pursuant to a title loan transaction by  
3175 the fraud, misrepresentation, breach of contract, financial  
3176 failure, or violation of any provision of this chapter ~~act~~ by  
3177 the title loan lender. Such liability may be enforced ~~either~~ by  
3178 proceeding in an administrative action or by filing a judicial  
3179 suit at law in a court of competent jurisdiction. However, in  
3180 such court suit, the bond, certificate of deposit, or letter of  
3181 credit posted with the department ~~is office shall~~ not be  
3182 amenable or subject to any judgment or other legal process  
3183 issuing out of or from such court in connection with such  
3184 lawsuit, but such bond, certificate of deposit, or letter of  
3185 credit is ~~shall be~~ amenable to and enforceable only by and  
3186 through administrative proceedings before the department ~~office~~.  
3187 ~~It is the intent of~~ The Legislature intends that such bond,  
3188 certificate of deposit, or letter of credit ~~shall~~ be applicable  
3189 and liable only for the payment of claims duly adjudicated by  
3190 order of the department ~~office~~. The bond, certificate of

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3191 deposit, or letter of credit is ~~shall be~~ payable on a pro rata  
3192 basis as determined by the department office, but the aggregate  
3193 amount may not exceed the amount of the bond, certificate of  
3194 deposit, or letter of credit.

3195 (4) The department office shall approve an application and  
3196 issue a license if the department office determines that the  
3197 applicant satisfies the requirements of this chapter act.

3198 Section 85. Section 537.006, Florida Statutes, is amended  
3199 to read:

3200 537.006 Denial, suspension, or revocation of license.—

3201 (1) The following acts are violations of this chapter act  
3202 and constitute grounds for the disciplinary actions specified in  
3203 subsection (2):

3204 (a) Failure to comply with ~~any provision of~~ this chapter  
3205 ~~act~~, any rule or order adopted pursuant to this chapter act, or  
3206 any written agreement entered into with the department office.

3207 (b) Fraud, misrepresentation, deceit, or gross negligence  
3208 in any title loan transaction, regardless of reliance by or  
3209 damage to the borrower.

3210 (c) Fraudulent misrepresentation, circumvention, or  
3211 concealment of any matter required to be stated or furnished to  
3212 a borrower pursuant to this chapter act, regardless of reliance  
3213 by or damage to the borrower.

3214 (d) Imposition of illegal or excessive charges in any title  
3215 loan transaction.

3216 (e) False, deceptive, or misleading advertising by a title  
3217 loan lender.

3218 (f) Failure to maintain, preserve, and keep available for  
3219 examination all books, accounts, or other documents required by

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3220 this chapter ~~act~~, by any rule or order adopted pursuant to this  
3221 chapter ~~act~~, or by any agreement entered into with the  
3222 department ~~office~~.

3223 (g) Aiding, abetting, or conspiring by a title loan lender  
3224 with a person to circumvent or violate any of the requirements  
3225 of this chapter ~~act~~.

3226 (h) Refusal to provide information upon request of the  
3227 department ~~office~~, to permit inspection of books and records in  
3228 an investigation or examination by the department ~~office~~, or to  
3229 comply with a subpoena issued by the department ~~office~~.

3230 (i) Pleading nolo contendere to or having been convicted or  
3231 found guilty, regardless of whether adjudication was withheld,  
3232 of a crime involving fraud, dishonest dealing, or any act of  
3233 moral turpitude or acting as an ultimate equitable owner of 10  
3234 percent or more of a licensee who has pled nolo contendere to or  
3235 has been convicted or found guilty, regardless of whether  
3236 adjudication was withheld, of a crime involving fraud, dishonest  
3237 dealing, or any act of moral turpitude.

3238 (j) Making or having made material misstatement of fact in  
3239 an initial or renewal application for a license.

3240 (k) Having been the subject of any decision, finding,  
3241 injunction, suspension, prohibition, revocation, denial,  
3242 judgment, or administrative order by any court of competent  
3243 jurisdiction or administrative law judge, or by any state or  
3244 federal agency, involving a violation of any federal or state  
3245 law relating to title loans or any rule or regulation adopted  
3246 under such law, or has been the subject of any injunction or  
3247 adverse administrative order by a state or federal agency  
3248 regulating banking, insurance, finance or small loan companies,



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3249 real estate, mortgage brokers, or other related or similar  
3250 industries for acts involving fraud, dishonest dealing, or any  
3251 act of moral turpitude.

3252 (l) Failing to continuously maintain the bond, certificate  
3253 of deposit, or letter of credit required by s. 537.005(3).

3254 (m) Failing to timely pay any fee, charge, or fine imposed  
3255 or assessed pursuant to this chapter ~~act~~ or rules adopted under  
3256 this chapter ~~act~~.

3257 (n) Having a license or registration, or the equivalent, to  
3258 practice any profession or occupation denied, suspended,  
3259 revoked, or otherwise acted against by a licensing authority in  
3260 any jurisdiction for fraud, dishonest dealing, or any act of  
3261 moral turpitude.

3262 (o) Having demonstrated unworthiness, as defined by  
3263 department ~~commission~~ rule, to transact the business of a title  
3264 loan lender.

3265 (2) Upon a finding by the department ~~office~~ that any person  
3266 has committed any of the acts set forth in subsection (1), the  
3267 department ~~office~~ may enter an order taking one or more of the  
3268 following actions:

3269 (a) Denying an application for licensure under this chapter  
3270 ~~act~~.

3271 (b) Revoking or suspending a license previously granted  
3272 pursuant to this chapter ~~act~~.

3273 (c) Placing a licensee or an applicant for a license on  
3274 probation for a period of time and subject to such conditions as  
3275 the department ~~office~~ specifies.

3276 (d) Issuing a reprimand.

3277 (e) Imposing an administrative fine not to exceed \$5,000

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3278 for each separate act or violation.

3279 (3) If a person seeking licensure is anything other than a  
3280 natural person, the eligibility requirements of this section  
3281 apply to each direct or ultimate equitable owner of 10 percent  
3282 or more of the outstanding equity interest of such entity and to  
3283 each director, general partner, and executive officer.

3284 (4) It is sufficient cause for the department ~~office~~ to  
3285 take any of the actions specified in subsection (2), as to any  
3286 entity other than a natural person, if the department ~~office~~  
3287 finds grounds for such action as to any member of such entity,  
3288 as to any executive officer or director of the entity, or as to  
3289 any person with power to direct the management or policies of  
3290 the entity.

3291 (5) Each licensee is subject to the provisions of  
3292 subsection (2) for the acts of employees and agents of the  
3293 licensee if the licensee knew or should have known about such  
3294 acts.

3295 (6) Licensure under this chapter ~~act~~ may be denied or any  
3296 license issued under this chapter ~~act~~ may be suspended or  
3297 restricted if an applicant or licensee is charged, in a pending  
3298 enforcement action or pending criminal prosecution, with any  
3299 conduct that would authorize denial or revocation under this  
3300 section.

3301 Section 86. Section 537.008, Florida Statutes, is amended  
3302 to read:

3303 537.008 Title loan agreement.—

3304 (1) At the time a title loan lender makes a title loan, the  
3305 lender and the borrower shall execute a title loan agreement,  
3306 which shall be legibly typed or written in indelible ink and

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3307 completed as to all essential provisions before ~~prior to~~  
3308 execution by the borrower and lender. The title loan agreement  
3309 must ~~shall~~ include the following information:

3310 (a) The make, model, and year of the titled personal  
3311 property to which the loan property relates.

3312 (b) The vehicle identification number, or other comparable  
3313 identification number, along with the license plate number, if  
3314 applicable, of the titled personal property to which the loan  
3315 property relates.

3316 (c) The name, residential address, date of birth, physical  
3317 description, and social security number of the borrower.

3318 (d) The date the title loan agreement is executed by the  
3319 title loan lender and the borrower.

3320 (e) The identification number and the type of  
3321 identification, including the issuing agency, accepted from the  
3322 borrower.

3323 (f) The amount of money advanced, designated as the "amount  
3324 financed."

3325 (g) The maturity date of the title loan agreement, which  
3326 shall be 30 days after the date the title loan agreement is  
3327 executed by the title loan lender and the borrower.

3328 (h) The total title loan interest payable on the maturity  
3329 date, designated as the "finance charge."

3330 (i) The amount financed plus finance charge, which must be  
3331 paid to reclaim the loan property on the maturity date,  
3332 designated as the "total amount of all payments."

3333 (j) The interest rate, computed in accordance with the  
3334 regulations adopted by the Federal Reserve Board pursuant to the  
3335 federal Truth in Lending Act, designated as the "annual

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3336 percentage rate.”

3337 (2) The following information must ~~shall~~ also be printed on  
3338 all title loan agreements:

3339 (a) The name and physical address of the title loan office.

3340 (b) The name and address of the department ~~of Financial~~  
3341 ~~Services~~ as well as a telephone number to which consumers may  
3342 address complaints.

3343 (c) The following statement in not less than 12-point type  
3344 that:

3345 1. If the borrower fails to repay the full amount of the  
3346 title loan on or before the end of the maturity date or any  
3347 extension of the maturity date and fails to make a payment on  
3348 the title loan within 30 days after the end of the maturity date  
3349 or any extension of the maturity date, whichever is later, the  
3350 title loan lender may take possession of the borrower's motor  
3351 vehicle and sell the vehicle in the manner provided by law. If  
3352 the vehicle is sold, the borrower is entitled to any proceeds of  
3353 the sale in excess of the amount owed on the title loan and the  
3354 reasonable expenses of repossession and sale.

3355 2. If the title loan agreement is lost, destroyed, or  
3356 stolen, the borrower should immediately so advise the issuing  
3357 title loan lender in writing.

3358 (d) The statement that “The borrower represents and  
3359 warrants that the titled personal property to which the loan  
3360 property relates is not stolen and has no liens or encumbrances  
3361 against it, the borrower has the right to enter into this  
3362 transaction, and the borrower will not apply for a duplicate  
3363 certificate of title while the title loan agreement is in  
3364 effect.”

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3365 (e) A blank line for the signature of the borrower and the  
3366 title loan lender or the lender's agent.

3367  
3368 All owners of the titled personal property must sign the title  
3369 loan agreement.

3370 (3) At the time of the transaction, the title loan lender  
3371 shall deliver to the borrower an exact copy of the executed  
3372 title loan agreement.

3373 (4) Upon execution of a title loan agreement, the title  
3374 loan lender may take possession of the loan property and retain  
3375 possession of such property until such property is redeemed. The  
3376 borrower has ~~shall have~~ the exclusive right to redeem the loan  
3377 property by repaying all amounts legally due under the  
3378 agreement. When the loan property is redeemed, the lender shall  
3379 immediately return the loan property and commence action to  
3380 release any security interest in the titled personal property.  
3381 During the term of the agreement or any extension of the  
3382 agreement, a title loan lender may retain physical possession of  
3383 the loan property only. A title loan lender may ~~shall~~ not  
3384 require a borrower to provide any additional security or  
3385 guaranty as a condition to entering into a title loan  
3386 transaction.

3387 Section 87. Section 537.009, Florida Statutes, is amended  
3388 to read:

3389 537.009 Recordkeeping; reporting; safekeeping of property.—

3390 (1) Every title loan lender shall maintain, at the lender's  
3391 title loan office, such books, accounts, and records of the  
3392 business conducted under the license issued for such place of  
3393 business as will enable the department ~~office~~ to determine the

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3394 licensee's compliance with this chapter act.

3395 (2) The department office ~~office~~ may authorize the maintenance of  
3396 books, accounts, and records at a location other than the  
3397 lender's title loan office. The department office ~~office~~ may require  
3398 books, accounts, and records to be produced and available at a  
3399 reasonable and convenient location in this state within a  
3400 reasonable period of time after such a request.

3401 (3) The title loan lender shall maintain the original copy  
3402 of each completed title loan agreement on the title loan office  
3403 premises, and may shall not obliterate, discard, or destroy any  
3404 such original copy, for a period of at least 2 years after  
3405 making the final entry on any loan recorded in such office or  
3406 after an examination by the department Office of Financial  
3407 ~~Regulation~~, whichever is later.

3408 (4) Loan property that which is delivered to a title loan  
3409 lender shall be securely stored and maintained at the title loan  
3410 office unless the loan property has been forwarded to the  
3411 appropriate state agency for the purpose of having a lien  
3412 recorded or deleted.

3413 (5) The department commission ~~commission~~ may prescribe by rule the  
3414 books, accounts, documents, and records, and the minimum  
3415 information to be shown in the books, accounts, documents, and  
3416 records, of licensees so that such records will enable the  
3417 department office ~~office~~ to determine compliance with the provisions of  
3418 this chapter act. In addition, the department commission ~~commission~~ may  
3419 prescribe by rule requirements for the destruction of books,  
3420 accounts, records, and documents retained by the licensee after  
3421 completion of the time period specified in subsection (3).

3422 Section 88. Subsections (2) through (5) of section 537.011,

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3423 Florida Statutes, are amended to read:

3424 537.011 Title loan charges.—

3425 (2) The annual percentage rate that may be charged for a  
3426 title loan may equal, but not exceed, the annual percentage rate  
3427 that must be computed and disclosed as required by the federal  
3428 Truth in Lending Act and Regulation Z of the Board of Governors  
3429 of the Federal Reserve System. The maximum annual percentage  
3430 rate of interest that may be charged is 12 times the maximum  
3431 monthly rate, and the maximum monthly rate must be computed on  
3432 the basis of one-twelfth of the annual rate for each full month.  
3433 The maximum daily rate of finance charge is one-thirtieth of the  
3434 maximum monthly rate ~~The commission shall establish by rule the~~  
3435 ~~rate for each day in a fraction of a month~~ when the period for  
3436 which the charge is computed is more or less than 1 month.

3437 (3) A title loan agreement may be extended for one or more  
3438 30-day periods by mutual consent of the title loan lender and  
3439 the borrower. Each extension of a title loan agreement shall be  
3440 executed in a separate extension agreement, each of which shall  
3441 comply with the requirements for executing a title loan  
3442 agreement as provided in this chapter ~~act~~. The interest rate  
3443 charged in any title loan extension agreement may ~~shall~~ not  
3444 exceed the interest rate charged in the related title loan  
3445 agreement. A title loan lender may not capitalize in any title  
3446 loan extension agreement any unpaid interest due on the related  
3447 title loan agreement or any subsequent extensions to that title  
3448 loan agreement.

3449 (4) Any interest contracted for or received, directly or  
3450 indirectly, by a title loan lender, or an agent of the title  
3451 loan lender, in excess of the amounts authorized under this

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3452 chapter is prohibited and may not be collected by the title loan  
3453 lender or an agent of the title loan lender.

3454 (a) If such excess interest resulted from a bona fide error  
3455 by the title loan lender, or an agent of the title loan lender,  
3456 the title loan agreement shall be voidable and the lender shall  
3457 refund the excess interest to the borrower within 20 days after  
3458 discovery by the lender or borrower of the bona fide error,  
3459 whichever occurs first.

3460 (b) If such excess interest resulted from an act by the  
3461 title loan lender, or an agent of the title loan lender, to  
3462 circumvent the maximum title loan interest allowed by this  
3463 chapter ~~act~~, the title loan agreement is void. The lender shall  
3464 refund to the borrower any interest paid on the title loan and  
3465 return to the borrower the loan property. The title loan lender  
3466 forfeits the lender's right to collect any principal owed by the  
3467 borrower on the title loan.

3468 (c) The department ~~office~~ may order a title loan lender, or  
3469 an agent of the title loan lender, to comply with the provisions  
3470 of paragraphs (a) and (b).

3471 (5) Any interest contracted for or received, directly or  
3472 indirectly, by a title loan lender, or an agent of the title  
3473 loan lender, in excess of the amount allowed by this chapter ~~act~~  
3474 constitutes a violation of chapter 687, governing interest and  
3475 usury, and the penalties of that chapter apply.

3476 Section 89. Subsection (3) of section 537.012, Florida  
3477 Statutes, is amended to read:

3478 537.012 Repossession, disposal of pledged property; excess  
3479 proceeds.—

3480 (3) Upon taking possession of titled personal property, the



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3481 lender may dispose of the titled personal property by sale but  
3482 may do so only through a motor vehicle dealer licensed under s.  
3483 320.27. At least 10 days before the ~~prior to~~ sale, the lender  
3484 shall notify the borrower of the date, time, and place of the  
3485 sale and provide the borrower with a written accounting of the  
3486 principal amount due on the title loan, interest accrued through  
3487 the date the lender takes possession of the titled personal  
3488 property, and any reasonable expenses incurred to date by the  
3489 lender in taking possession of, preparing for sale, and selling  
3490 the titled personal property. At any time before ~~prior to~~ such  
3491 sale, the lender shall permit the borrower to redeem the titled  
3492 personal property by tendering a money order or certified check  
3493 for the principal amount of the title loan, interest accrued  
3494 through the date the lender takes possession, and any reasonable  
3495 expenses incurred to date by the lender in taking possession of,  
3496 preparing for sale, and selling the titled personal property.  
3497 This chapter does not and a ~~Nothing in this act nor in any title~~  
3498 loan agreement may not ~~shall~~ preclude a borrower from purchasing  
3499 the titled personal property at any sale.

3500 Section 90. Section 537.013, Florida Statutes, is amended  
3501 to read:

3502 537.013 Prohibited acts.—

3503 (1) A title loan lender, or any agent or employee of a  
3504 title loan lender, may ~~shall~~ not:

3505 (a) Falsify or fail to make an entry of any material matter  
3506 in a title loan agreement or any extension of such agreement.

3507 (b) Refuse to allow the department ~~office~~ to inspect  
3508 completed title loan agreements, extensions of such agreements,  
3509 or loan property during the ordinary operating hours of the

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3510 title loan lender's business or other times acceptable to both  
3511 parties.

3512 (c) Enter into a title loan agreement with a person under  
3513 the age of 18 years.

3514 (d) Make any agreement requiring or allowing for the  
3515 personal liability of a borrower or the waiver of any of the  
3516 provisions of this chapter ~~act~~.

3517 (e) Knowingly enter into a title loan agreement with any  
3518 person who is under the influence of drugs or alcohol when such  
3519 condition is visible or apparent, or with any person using a  
3520 name other than such person's own name or the registered name of  
3521 the person's business.

3522 (f) Fail to exercise reasonable care, as defined by  
3523 department ~~commission~~ rule, in the safekeeping of loan property  
3524 or of titled personal property repossessed pursuant to this  
3525 chapter ~~act~~.

3526 (g) Fail to return loan property or repossessed titled  
3527 personal property to a borrower, with any and all of the title  
3528 loan lender's liens on the property properly released, upon  
3529 payment of the full amount due the title loan lender, unless the  
3530 property has been seized or impounded by an authorized law  
3531 enforcement agency, taken into custody by a court, or otherwise  
3532 disposed of by court order.

3533 (h) Sell or otherwise charge for any type of insurance in  
3534 connection with a title loan agreement.

3535 (i) Charge or receive any finance charge, interest, or fees  
3536 that ~~which~~ are not authorized pursuant to this chapter ~~act~~.

3537 (j) Act as a title loan lender without an active license  
3538 issued under this chapter ~~act~~.

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3539 (k) Refuse to accept partial payments toward satisfying any  
3540 obligation owed under a title loan agreement or extension of  
3541 such agreement.

3542 (l) Charge a prepayment penalty.

3543 (m) Engage in the business of selling new or used motor  
3544 vehicles, or parts for motor vehicles.

3545 (n) Act as a title loan lender under this chapter act  
3546 within a place of business in which the licensee solicits or  
3547 engages in business outside the scope of this chapter act if the  
3548 department office determines that the licensee's operation of  
3549 and conduct pertaining to such other business results in an  
3550 evasion of this chapter act. Upon making such a determination,  
3551 the department office shall order the licensee to cease and  
3552 desist from such evasion. A; provided, no licensee may not shall  
3553 engage in the pawnbroker business.

3554 (2) Title loan companies may not advertise using the words  
3555 "interest free loans" or "no finance charges."

3556 Section 91. Section 537.015, Florida Statutes, is amended  
3557 to read:

3558 537.015 Criminal penalties.—

3559 (1) Any person who acts as a title loan lender without  
3560 first securing the license prescribed by this chapter act  
3561 commits a felony of the third degree, punishable as provided in  
3562 s. 775.082, s. 775.083, or s. 775.084.

3563 (2) In addition to any other applicable penalty, any person  
3564 who willfully violates any provision of this chapter act or who  
3565 willfully makes a false entry in any record specifically  
3566 required by this chapter act commits a misdemeanor of the first  
3567 degree, punishable as provided in s. 775.082 or s. 775.083.

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3568 Section 92. Section 537.016, Florida Statutes, is amended  
3569 to read:

3570 537.016 Subpoenas; enforcement actions; rules.—

3571 (1) The department ~~office~~ may issue and serve subpoenas to  
3572 compel the attendance of witnesses and the production of  
3573 documents, papers, books, records, and other evidence before the  
3574 department ~~office~~ in any matter pertaining to this chapter ~~act~~.  
3575 The department ~~office~~ may administer oaths and affirmations to  
3576 any person whose testimony is required. If any person refuses to  
3577 testify, ~~to~~ produce books, records, and documents, ~~or to~~  
3578 otherwise ~~refuses to~~ obey a subpoena issued under this section,  
3579 the department ~~office~~ may enforce the subpoena in the same  
3580 manner as subpoenas issued under the Administrative Procedure  
3581 Act are enforced. Witnesses are entitled to the same fees and  
3582 mileage as they are entitled to by law for attending as  
3583 witnesses in the circuit court, unless such examination or  
3584 investigation is held at the place of business or residence of  
3585 the witness.

3586 (2) In addition to any other powers conferred upon the  
3587 department ~~office~~ to enforce or administer this chapter ~~act~~, the  
3588 department ~~office~~ may:

3589 (a) Bring an action in any court of competent jurisdiction  
3590 to enforce or administer this chapter ~~act~~, any rule or order  
3591 adopted under this chapter ~~act~~, or any written agreement entered  
3592 into with the department ~~office~~. In such action, the department  
3593 ~~office~~ may seek any relief at law or equity, including a  
3594 temporary or permanent injunction, appointment of a receiver or  
3595 administrator, or an order of restitution.

3596 (b) Issue and serve upon a person an order requiring the

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3597 ~~such~~ person to cease and desist and take corrective action  
3598 whenever the department ~~office~~ finds that the ~~such~~ person is  
3599 violating, has violated, or is about to violate ~~any provision of~~  
3600 this chapter ~~act~~, any rule or order adopted under this chapter  
3601 ~~act~~, or any written agreement entered into with the department  
3602 ~~office~~.

3603 (c) Whenever the department ~~office~~ finds that conduct  
3604 described in paragraph (b) presents an immediate danger to the  
3605 public health, safety, or welfare requiring an immediate final  
3606 order, the department ~~office~~ may issue an emergency cease and  
3607 desist order reciting with particularity the facts underlying  
3608 such findings. The emergency cease and desist order is effective  
3609 immediately upon service of a copy of the order on the  
3610 respondent named in the order and remains ~~shall remain~~ effective  
3611 for 90 days. If the department ~~office~~ begins nonemergency  
3612 proceedings under paragraph (b), the emergency cease and desist  
3613 order remains effective until the conclusion of the proceedings  
3614 under ss. 120.569 and 120.57.

3615 (3) The department ~~commission~~ may adopt rules to administer  
3616 this chapter ~~act~~.

3617 Section 93. Section 537.017, Florida Statutes, is amended  
3618 to read:

3619 537.017 Investigations and complaints.—

3620 (1) The department ~~office~~ may make any investigation and  
3621 examination of any licensee or other person the department  
3622 ~~office~~ deems necessary to determine compliance with this chapter  
3623 ~~act~~. For such purposes, the department ~~office~~ may examine the  
3624 books, accounts, records, and other documents or matters of any  
3625 licensee or other person. The department ~~office~~ may compel the

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3626 production of all relevant books, records, and other documents  
3627 and materials relative to an examination or investigation.  
3628 Examinations may ~~shall~~ not be made more often than once during  
3629 any 12-month period unless the department ~~office~~ has reason to  
3630 believe the licensee is not complying with the provisions of  
3631 this chapter ~~act~~.

3632 (2) The department ~~office~~ shall conduct all examinations at  
3633 a convenient location in this state unless the department ~~office~~  
3634 determines that it is more effective or cost-efficient to  
3635 perform an examination at the licensee's out-of-state location.  
3636 For an examination performed at the licensee's out-of-state  
3637 location, the licensee shall pay the travel expense and per diem  
3638 subsistence at the rate provided by law for up to thirty 8-hour  
3639 days per year for each department ~~office~~ examiner who  
3640 participates in the ~~such an~~ examination. However, if the  
3641 examination involves or reveals possible fraudulent conduct by  
3642 the licensee, the licensee shall pay the travel expenses and per  
3643 diem subsistence provided by law, without limitation, for each  
3644 participating examiner.

3645 (3) Any person having reason to believe that any provision  
3646 of this chapter ~~act~~ has been violated may file with the  
3647 department ~~of Financial Services or the office~~ a written  
3648 complaint setting forth the details of such alleged violation,  
3649 and the department ~~office~~ may investigate the ~~such~~ complaint.

3650 Section 94. Part V of chapter 559, Florida Statutes,  
3651 consisting of ss. 559.541, 559.542, 559.543, 559.544, 559.545,  
3652 559.546, 559.547, and 559.548, Florida Statutes, are repealed.  
3653 The Division of Statutory Revision is requested to redesignate  
3654 parts VI through XII of chapter 559, Florida Statutes, as parts

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3655 V through XI.

3656 Section 95. All of the powers, duties, functions, records,  
3657 personnel, and property; unexpended balances of appropriations,  
3658 allocations, and other funds; administrative authority;  
3659 administrative rules; pending issues; and existing contracts of  
3660 the Office of Financial Regulation of the Financial Services  
3661 Commission for the administration of existing part VI of chapter  
3662 559, Florida Statutes, relating to consumer collection  
3663 practices, are transferred by a type two transfer, pursuant to  
3664 s. 20.06(2), Florida Statutes, to the Department of Business and  
3665 Professional Regulation.

3666 Section 96. Section 559.55, Florida Statutes, is amended to  
3667 read:

3668 559.55 Definitions.—The following terms shall, unless the  
3669 context otherwise indicates, have the following meanings for the  
3670 purpose of this part:

3671 (4)~~(1)~~ "Debt" or "consumer debt" means any obligation or  
3672 alleged obligation of a consumer to pay money arising out of a  
3673 transaction in which the money, property, insurance, or services  
3674 that ~~which~~ are the subject of the transaction are primarily for  
3675 personal, family, or household purposes, whether or not such  
3676 obligation has been reduced to judgment.

3677 (6)~~(2)~~ "Debtor" or "consumer" means any natural person  
3678 obligated or allegedly obligated to pay any debt.

3679 (3) "Creditor" means any person who offers or extends  
3680 credit creating a debt or to whom a debt is owed, but does not  
3681 include any person to the extent that they receive an assignment  
3682 or transfer of a debt in default solely for the purpose of  
3683 facilitating collection of such debt for another.

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3684 ~~(4) "Office" means the Office of Financial Regulation of~~  
3685 ~~the Financial Services Commission.~~

3686 (1)~~(5)~~ "Communication" means the conveying of information  
3687 regarding a debt directly or indirectly to any person through  
3688 any medium.

3689 (5)~~(6)~~ "Debt collector" means any person who uses any  
3690 instrumentality of commerce within this state, whether initiated  
3691 from within or outside this state, in any business the principal  
3692 purpose of which is the collection of debts, or who regularly  
3693 collects or attempts to collect, directly or indirectly, debts  
3694 owed or due or asserted to be owed or due another. The term  
3695 "debt collector" includes any creditor who, in the process of  
3696 collecting her or his own debts, uses any name other than her or  
3697 his own which would indicate that a third person is collecting  
3698 or attempting to collect such debts. The term does not include:

3699 (a) Any officer or employee of a creditor while, in the  
3700 name of the creditor, collecting debts for such creditor;

3701 (b) Any person while acting as a debt collector for another  
3702 person, both of whom are related by common ownership or  
3703 affiliated by corporate control, if the person acting as a debt  
3704 collector for persons to whom it is so related or affiliated and  
3705 if the principal business of such persons is not the collection  
3706 of debts;

3707 (c) Any officer or employee of any federal, state, or local  
3708 governmental body to the extent that collecting or attempting to  
3709 collect any debt is in the performance of her or his official  
3710 duties;

3711 (d) Any person while serving or attempting to serve legal  
3712 process on any other person in connection with the judicial



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3713 enforcement of any debt;

3714 (e) Any not-for-profit organization that ~~which~~, at the  
3715 request of consumers, performs bona fide consumer credit  
3716 counseling and assists consumers in the liquidation of their  
3717 debts by receiving payments from such consumers and distributing  
3718 such amounts to creditors; or

3719 (f) Any person collecting or attempting to collect any debt  
3720 owed or due or asserted to be owed or due another to the extent  
3721 that such activity is incidental to a bona fide fiduciary  
3722 obligation or a bona fide escrow arrangement; concerns a debt  
3723 that ~~which~~ was originated by such person; concerns a debt that  
3724 ~~which~~ was not in default at the time it was obtained by such  
3725 person; or concerns a debt obtained by such person as a secured  
3726 party in a commercial credit transaction involving the creditor.

3727 (7) "Department" means the Department of Business and  
3728 Professional Regulation.

3729 (2)~~(7)~~ "Consumer collection agency" means any debt  
3730 collector or business entity engaged in the business of  
3731 soliciting consumer debts for collection or of collecting  
3732 consumer debts, which debt collector or business is not  
3733 expressly exempted as set forth in s. 559.553(4).

3734 (9)~~(8)~~ "Out-of-state consumer debt collector" means any  
3735 person whose business activities in this state involve both  
3736 collecting or attempting to collect consumer debt from debtors  
3737 located in this state by means of interstate communication  
3738 originating from outside this state and soliciting consumer debt  
3739 accounts for collection from creditors who have a business  
3740 presence in this state. For purposes of this subsection, a  
3741 creditor has a business presence in this state if either the

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3742 creditor or an affiliate or subsidiary of the creditor has an  
3743 office in this state.

3744 ~~(8)-(9)~~ "Federal Fair Debt Collection Practices Act" or  
3745 "Federal Act" means the federal legislation regulating fair debt  
3746 collection practices, as set forth in Pub. L. No. 95-109, as  
3747 amended and published in 15 U.S.C. ss. 1692 et seq.

3748 Section 97. Subsections (2), (3), and (5) of section  
3749 559.553, Florida Statutes, are amended to read:

3750 559.553 Registration of consumer collection agencies  
3751 required; exemptions.—

3752 (2) Each consumer collection agency doing business in this  
3753 state shall register with the department ~~office~~ and renew such  
3754 registration annually as set forth in s. 559.555.

3755 (3) A prospective registrant shall be entitled to be  
3756 registered when registration information is complete on its face  
3757 and the applicable registration fee has been paid; however, the  
3758 department ~~office~~ may reject a registration submitted by a  
3759 prospective registrant if the registrant or any principal of the  
3760 registrant previously has held any professional license or state  
3761 registration that ~~which~~ was the subject of any suspension or  
3762 revocation that ~~which~~ has not been explained by the prospective  
3763 registrant to the satisfaction of the department ~~office~~ either  
3764 in the registration information submitted initially or upon the  
3765 subsequent written request of the department ~~office~~. In the  
3766 event that an attempted registration is rejected by the  
3767 department ~~office~~ the prospective registrant shall be informed  
3768 of the basis for rejection.

3769 (5) Any out-of-state consumer debt collector as defined in  
3770 s. 559.55(9) ~~s. 559.55(8)~~ who is not exempt from registration

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3771 by application of subsection (4) and who fails to register in  
3772 accordance with this part shall be subject to an enforcement  
3773 action by the state as specified in s. 559.565.

3774 Section 98. Section 559.555, Florida Statutes, is amended  
3775 to read:

3776 559.555 Registration of consumer collection agencies;  
3777 procedure.—Any person required to register as a consumer  
3778 collection agency shall furnish to the department ~~office~~ the  
3779 registration fee and information as follows:

3780 (1) The registrant shall pay to the department ~~office~~ a  
3781 registration fee in the amount of \$200. All amounts collected  
3782 shall be deposited by the department ~~office~~ to the credit of the  
3783 Regulatory Trust Fund of the department ~~office~~.

3784 (2) Each registrant shall provide to the department ~~office~~  
3785 the business name or trade name, the current mailing address,  
3786 the current business location that is ~~which constitutes~~ its  
3787 principal place of business, and the full name of each  
3788 individual who is a principal of the registrant. "Principal of a  
3789 registrant" means the registrant's owners if a partnership or  
3790 sole proprietorship, corporate officers, corporate directors  
3791 other than directors of a not-for-profit corporation organized  
3792 pursuant to chapter 617 and Florida resident agent if a  
3793 corporate registrant. The registration information shall include  
3794 a statement clearly identifying and explaining any occasion on  
3795 which any professional license or state registration held by the  
3796 registrant, by any principal of the registrant, or by any  
3797 business entity in which any principal of the registrant was the  
3798 owner of 10 percent or more of such business, was the subject of  
3799 any suspension or revocation.

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3800 (3) Renewal of registration shall be made between October 1  
3801 and December 31 of each year. There shall be no proration of the  
3802 fee for any registration.

3803 Section 99. Section 559.5556, Florida Statutes, is amended  
3804 to read:

3805 559.5556 Maintenance of records.—

3806 (1) Each registered consumer collection agency shall  
3807 maintain, at the principal place of business designated on the  
3808 registration, all books, accounts, records, and documents  
3809 necessary to determine the registrant's compliance with this  
3810 part.

3811 (2) The department ~~office~~ may authorize the maintenance of  
3812 records at a location other than a principal place of business.  
3813 The department ~~office~~ may require books, accounts, and records  
3814 to be produced and available at a reasonable and convenient  
3815 location in this state.

3816 (3) The department ~~commission~~ may prescribe by rule the  
3817 minimum information to be shown in the books, accounts, records,  
3818 and documents of registrants so that such records enable the  
3819 department ~~office~~ to determine the registrant's compliance with  
3820 this part.

3821 (4) All books, accounts, records, documents, and receipts  
3822 of any debt collection transaction must be preserved and kept  
3823 available for inspection by the department ~~office~~ for at least 3  
3824 years after the date the transaction is completed. The  
3825 department ~~commission~~ may prescribe by rule requirements for the  
3826 destruction of books, accounts, records, and documents retained  
3827 by the registrant after the completion of the 3 years.

3828 Section 100. Section 559.563, Florida Statutes, is amended

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3829 to read:

3830       559.563 Void registration.—Any registration made under this  
3831 part based upon false identification or false information, or  
3832 identification not current with respect to name, address, and  
3833 business location, or other fact that ~~which~~ is material to such  
3834 registration, shall be void. Any registration made and  
3835 subsequently void under this section may ~~shall~~ not be construed  
3836 as creating any defense in any action by the department ~~office~~  
3837 to impose any sanction for any violation of this part.

3838       Section 101. Section 559.565, Florida Statutes, is amended  
3839 to read:

3840       559.565 Enforcement action against out-of-state consumer  
3841 debt collector.—The remedies of this section are cumulative to  
3842 other sanctions and enforcement provisions of this part for any  
3843 violation by an out-of-state consumer debt collector, as defined  
3844 in s. 559.55(9) ~~s. 559.55(8)~~.

3845       (1) An out-of-state consumer debt collector who collects or  
3846 attempts to collect consumer debts in this state without first  
3847 registering in accordance with this part is subject to an  
3848 administrative fine of up to \$10,000 together with reasonable  
3849 attorney fees and court costs in any successful action by the  
3850 state to collect such fines.

3851       (2) Any person, whether or not exempt from registration  
3852 under this part, who violates s. 559.72 is subject to sanctions  
3853 the same as any other consumer debt collector, including  
3854 imposition of an administrative fine. The registration of a duly  
3855 registered out-of-state consumer debt collector is subject to  
3856 revocation or suspension in the same manner as the registration  
3857 of any other registrant under this part.

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3858 (3) In order to effectuate this section and enforce the  
3859 requirements of this part as it relates to out-of-state consumer  
3860 debt collectors, the Attorney General is expressly authorized to  
3861 initiate such action on behalf of the state as he or she deems  
3862 appropriate in any state or federal court of competent  
3863 jurisdiction.

3864 Section 102. Section 559.725, Florida Statutes, is amended  
3865 to read:

3866 559.725 Consumer complaints; administrative duties.—

3867 (1) The department ~~office~~ shall receive and maintain  
3868 records of correspondence and complaints from consumers  
3869 concerning any and all persons who collect debts, including  
3870 consumer collection agencies.

3871 (2) The department ~~office~~ shall inform and furnish relevant  
3872 information to the appropriate regulatory body of the state or  
3873 the Federal Government, or The Florida Bar in the case of  
3874 attorneys, if a person has been named in a consumer complaint  
3875 pursuant to subsection (3) alleging violations of s. 559.72. The  
3876 Attorney General may take action against any person in violation  
3877 of this part.

3878 (3) The complainant, subject to penalty of perjury as  
3879 provided in s. 837.06, shall certify on a form approved by the  
3880 department ~~Financial Services Commission~~ a summary of the nature  
3881 of the alleged violation and the facts that allegedly support  
3882 the complaint, and shall submit the form to the department  
3883 ~~office~~.

3884 (4) The department ~~office~~ shall investigate complaints and  
3885 record the resolution of such complaints.

3886 (5) The department ~~office~~ shall advise the appropriate

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3887 state attorney or the Attorney General of any determination by  
3888 the department ~~office~~ of a violation of this part by any  
3889 consumer collection agency that is not registered as required by  
3890 this part. The department ~~office~~ shall furnish the state  
3891 attorney or Attorney General with the department's ~~office's~~  
3892 information concerning the alleged violations of such  
3893 requirements.

3894 (6) A registered consumer collection agency must provide a  
3895 written response to the department ~~office~~ within 45 days after  
3896 receipt of a written request from the department ~~office~~ for  
3897 information concerning a consumer complaint. The response must  
3898 address the issues and allegations raised in the complaint. The  
3899 department ~~office~~ may impose an administrative fine of up to  
3900 \$250 per request per day upon any registrant that fails to  
3901 comply with this subsection.

3902 Section 103. Section 559.726, Florida Statutes, is amended  
3903 to read:

3904 559.726 Subpoenas.—

3905 (1) The department ~~office~~ may:

3906 (a) Issue and serve subpoenas and subpoenas duces tecum to  
3907 compel the attendance of witnesses and the production of all  
3908 books, accounts, records, and other documents and materials  
3909 relevant to an investigation conducted by the department ~~office~~.  
3910 The department ~~office~~, or its authorized representative, may  
3911 administer oaths and affirmations to any person.

3912 (b) Seek subpoenas or subpoenas duces tecum from any court  
3913 to command the appearance of witnesses and the production of  
3914 books, accounts, records, and other documents or materials at a  
3915 time and place named in the subpoenas, and an authorized

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3916 representative of the department ~~office~~ may serve such  
3917 subpoenas.

3918 (2) If there is substantial noncompliance with a subpoena  
3919 or subpoena duces tecum issued by the department ~~office~~, the  
3920 department ~~office~~ may petition the court in the county where the  
3921 person subpoenaed resides or has his or her principal place of  
3922 business for an order requiring the person to appear, testify,  
3923 or produce such books, accounts, records, and other documents as  
3924 are specified in the subpoena or subpoena duces tecum.

3925 (3) The department ~~office~~ is entitled to the summary  
3926 procedure provided in s. 51.011, and the court shall advance  
3927 such cause on its calendar. Attorney ~~Attorney's~~ fees and any  
3928 other costs incurred by the department ~~office~~ to obtain an order  
3929 granting, in whole or in part, a petition for enforcement of a  
3930 subpoena or subpoena duces tecum shall be taxed against the  
3931 subpoenaed person, and failure to comply with such order is a  
3932 contempt of court.

3933 (4) To aid in the enforcement of this part, the department  
3934 ~~office~~ may require or permit a person to file a statement in  
3935 writing, under oath, or otherwise as the department ~~office~~  
3936 determines, as to all the facts and circumstances concerning the  
3937 matter to be investigated.

3938 Section 104. Section 559.727, Florida Statutes, is amended  
3939 to read:

3940 559.727 Cease and desist orders.—The department ~~office~~ may  
3941 issue and serve upon any person an order to cease and desist and  
3942 to take corrective action if it has reason to believe the person  
3943 is violating, has violated, or is about to violate any provision  
3944 of this part, any rule or order issued under this part, or any



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3945 written agreement between the person and the department ~~office~~.  
3946 All procedural matters relating to issuance and enforcement of  
3947 such order are governed by chapter 120.

3948 Section 105. Section 559.730, Florida Statutes, is amended  
3949 to read:

3950 559.730 Administrative remedies.—

3951 (1) The department ~~office~~ may impose an administrative fine  
3952 against, or revoke or suspend the registration of, a registrant  
3953 under this part who has committed a violation of s. 559.72.

3954 Final action to fine, suspend, or revoke the registration of a  
3955 registrant is subject to review in accordance with chapter 120.

3956 (2) The department ~~office~~ may impose suspension rather than  
3957 revocation of a registration if circumstances warrant that one  
3958 or the other should be imposed and the registrant demonstrates  
3959 that the registrant has taken affirmative steps that can be  
3960 expected to effectively eliminate the violations and that the  
3961 registrant's registration has never been previously suspended.

3962 (3) In addition to, or in lieu of suspension or revocation  
3963 of a registration, the department ~~office~~ may impose an  
3964 administrative fine of up to \$10,000 per violation against a  
3965 registrant for violations of s. 559.72. The department ~~Financial~~  
3966 ~~Services Commission~~ shall adopt rules establishing guidelines  
3967 for imposing administrative penalties.

3968 (4) This part does not preclude any person from pursuing  
3969 remedies available under the Federal Fair Debt Collection  
3970 Practices Act for any violation of such act.

3971 Section 106. Section 559.785, Florida Statutes, is amended  
3972 to read:

3973 559.785 Criminal penalty.—It shall be a misdemeanor of the

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3974 first degree, punishable as provided in s. 775.082 or s.  
 3975 775.083, for any person not exempt from registering as provided  
 3976 in this part to engage in collecting consumer debts in this  
 3977 state without first registering with the department ~~office~~, or  
 3978 to register or attempt to register by means of fraud,  
 3979 misrepresentation, or concealment.

3980 Section 107. Section 687.14, Florida Statutes, is amended  
 3981 to read:

3982 687.14 Definitions.—As used in this chapter ~~act~~, unless the  
 3983 context otherwise requires, the term:

3984 (1) "Advance fee" means any consideration that ~~which~~ is  
 3985 assessed or collected, before ~~prior to~~ the closing of a loan, by  
 3986 a loan broker.

3987 (2) "Borrower" means a person obtaining or desiring to  
 3988 obtain a loan of money, a credit card, or a line of credit.

3989 ~~(3) "Commission" means the Financial Services Commission.~~

3990 (3) ~~(4)~~ "Loan broker" means any person, except any bank or  
 3991 savings and loan association, trust company, building and loan  
 3992 association, credit union, consumer finance company, retail  
 3993 installment sales company, securities broker-dealer, real estate  
 3994 broker or sales associate, attorney, federal Housing  
 3995 Administration or United States Department of Veterans Affairs  
 3996 approved lender, credit card company, installment loan licensee,  
 3997 mortgage broker or lender, or insurance company, if ~~provided~~  
 3998 ~~that~~ the person excepted is licensed by and subject to  
 3999 regulation or supervision of any agency of the United States or  
 4000 this state and is acting within the scope of the license; and  
 4001 also except ~~excepting~~ subsidiaries of licensed or chartered  
 4002 consumer finance companies, banks, or savings and loan

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4003 associations; who:

4004 (a) For or in expectation of consideration arranges or  
4005 attempts to arrange or offers to fund a loan of money, a credit  
4006 card, or a line of credit;

4007 (b) For or in expectation of consideration assists or  
4008 advises a borrower in obtaining or attempting to obtain a loan  
4009 of money, a credit card, a line of credit, or related guarantee,  
4010 enhancement, or collateral of any kind or nature;

4011 (c) Acts for or on behalf of a loan broker for the purpose  
4012 of soliciting borrowers; or

4013 (d) Holds herself or himself out as a loan broker.

4014 ~~(4)~~<sup>(5)</sup> "Principal" means any officer, director, partner,  
4015 joint venturer, branch manager, or other person with similar  
4016 managerial or supervisory responsibilities for a loan broker.

4017 ~~(6) "Office" means the Office of Financial Regulation of~~  
4018 ~~the commission.~~

4019 Section 108. Section 687.144, Florida Statutes, is  
4020 repealed.

4021 Section 109. Section 687.145, Florida Statutes, is  
4022 repealed.

4023 Section 110. Section 687.148, Florida Statutes, is  
4024 repealed.

4025 Section 111. Subsection (2) of section 17.20, Florida  
4026 Statutes, is amended to read:

4027 17.20 Assignment of claims for collection.-

4028 (2) The Chief Financial Officer may assign the collection  
4029 of any claim to a collection agent or agents ~~who are registered~~  
4030 ~~and in good standing pursuant to chapter 559~~, if the Chief  
4031 Financial Officer determines the assignation to be cost-

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4032 effective. The Chief Financial Officer may authorize the agent  
4033 or agents to add a fee to the amount to be collected.

4034 Section 112. Paragraph (b) of subsection (9) of section  
4035 20.165, Florida Statutes, is amended to read:

4036 20.165 Department of Business and Professional Regulation.—  
4037 There is created a Department of Business and Professional  
4038 Regulation.

4039 (9)

4040 (b) Each employee serving as a law enforcement officer for  
4041 the division must meet the qualifications for employment or  
4042 appointment as a law enforcement officer set forth under s.  
4043 943.13 and must be certified as a law enforcement officer by the  
4044 Department of Law Enforcement under chapter 943. Upon  
4045 certification, each law enforcement officer is subject to and  
4046 has the same authority as provided for law enforcement officers  
4047 generally in chapter 901 and has statewide jurisdiction. Each  
4048 officer also has arrest authority as provided for state law  
4049 enforcement officers in s. 901.15. Each officer possesses the  
4050 full law enforcement powers granted to other peace officers of  
4051 this state, including the authority to make arrests, carry  
4052 firearms, serve court process, and seize contraband and the  
4053 proceeds of illegal activities.

4054 1. The primary responsibility of each officer appointed  
4055 under this section is to investigate, enforce, and prosecute,  
4056 throughout the state, violations and violators of parts I and II  
4057 of chapter 210, part VI ~~part VII~~ of chapter 559, and chapters  
4058 561-569, and the rules adopted thereunder, as well as other  
4059 state laws that the division, all state law enforcement  
4060 officers, or beverage enforcement agents are specifically

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4061 authorized to enforce.

4062         2. The secondary responsibility of each officer appointed  
4063 under this section is to enforce all other state laws, provided  
4064 that the enforcement is incidental to exercising the officer's  
4065 primary responsibility as provided in subparagraph 1., and the  
4066 officer exercises the powers of a deputy sheriff, only after  
4067 consultation or coordination with the appropriate local  
4068 sheriff's office or municipal police department or when the  
4069 division participates in the Florida Mutual Aid Plan during a  
4070 declared state emergency.

4071         Section 113. Subsection (6) of section 28.246, Florida  
4072 Statutes, is amended to read:

4073         28.246 Payment of court-related fees, charges, and costs;  
4074 partial payments; distribution of funds.—

4075         (6) A clerk of court shall pursue the collection of any  
4076 fees, service charges, fines, court costs, and liens for the  
4077 payment of attorney ~~attorney's~~ fees and costs pursuant to s.  
4078 938.29 which remain unpaid after 90 days by referring the  
4079 account to a private attorney who is a member in good standing  
4080 of The Florida Bar or collection agent ~~who is registered and in~~  
4081 ~~good standing pursuant to chapter 559~~. In pursuing the  
4082 collection of such unpaid financial obligations through a  
4083 private attorney or collection agent, the clerk of the court  
4084 must have attempted to collect the unpaid amount through a  
4085 collection court, collections docket, or other collections  
4086 process, if any, established by the court, find this to be cost-  
4087 effective and follow any applicable procurement practices. The  
4088 collection fee, including any reasonable attorney ~~attorney's~~  
4089 fee, paid to any attorney or collection agent retained by the

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4090 clerk may be added to the balance owed in an amount not to  
4091 exceed 40 percent of the amount owed at the time the account is  
4092 referred to the attorney or agent for collection. The clerk  
4093 shall give the private attorney or collection agent the  
4094 application for the appointment of court-appointed counsel  
4095 regardless of whether the court file is otherwise confidential  
4096 from disclosure.

4097 Section 114. Section 205.1971, Florida Statutes, is amended  
4098 to read:

4099 205.1971 Sellers of travel; consumer protection.—A county  
4100 or municipality may not issue or renew a business tax receipt to  
4101 engage in business as a seller of travel pursuant to part X ~~part~~  
4102 ~~¶~~ of chapter 559 unless such business exhibits a current  
4103 registration or letter of exemption from the Department of  
4104 Agriculture and Consumer Services.

4105 Section 115. Paragraph (b) of subsection (9) of section  
4106 402.33, Florida Statutes, is amended to read:

4107 402.33 Department authority to charge fees for services  
4108 provided.—

4109 (9)

4110 (b) In collecting delinquent or unpaid fees, the department  
4111 may employ the services of a collection agency. ~~The collection~~  
4112 ~~agency must be registered and in good standing under chapter~~  
4113 ~~559.~~ The department may pay a collection agency from any amount  
4114 collected under the claim a fee that the department and the  
4115 agency have agreed upon, or may authorize the agency to deduct  
4116 the fee from the amount collected.

4117 Section 116. Subsection (20) of section 501.604, Florida  
4118 Statutes, is amended to read:

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4119           501.604 Exemptions.—The provisions of this part, except ss.  
4120 501.608 and 501.616(6) and (7), do not apply to:

4121           (20) A person who is registered pursuant to part X ~~part XI~~  
4122 of chapter 559 and who is soliciting within the scope of the  
4123 registration.

4124           Section 117. Subsection (11) of section 501.976, Florida  
4125 Statutes, is amended to read:

4126           501.976 Actionable, unfair, or deceptive acts or  
4127 practices.—It is an unfair or deceptive act or practice,  
4128 actionable under the Florida Deceptive and Unfair Trade  
4129 Practices Act, for a dealer to:

4130           (11) Add to the cash price of a vehicle as defined in s.  
4131 520.02~~(2)~~ any fee or charge other than those provided in that  
4132 section and in rule 69V-50.001, Florida Administrative Code. All  
4133 fees or charges permitted to be added to the cash price by rule  
4134 69V-50.001, Florida Administrative Code, must be fully disclosed  
4135 to customers in all binding contracts concerning the vehicle's  
4136 selling price.

4137  
4138 In any civil litigation resulting from a violation of this  
4139 section, when evaluating the reasonableness of an award of  
4140 attorney ~~attorney's~~ fees to a private person, the trial court  
4141 shall consider the amount of actual damages in relation to the  
4142 time spent.

4143           Section 118. Section 520.13, Florida Statutes, is amended  
4144 to read:

4145           520.13 Waiver.—Any waiver of the provisions of ss. 520.01-  
4146 520.10, s. 520.12, or s. 520.13, is ~~s. 520.993, s. 520.994, or~~  
4147 ~~s. 520.995 shall be unenforceable and void.~~

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4148 Section 119. Subsection (10) of section 560.309, Florida  
4149 Statutes, is amended to read:

4150 560.309 Conduct of business.—

4151 (10) If a check is returned to a licensee from a payor  
4152 financial institution due to lack of funds, a closed account, or  
4153 a stop-payment order, the licensee may seek collection pursuant  
4154 to s. 68.065. In seeking collection, the licensee must comply  
4155 with the prohibitions against harassment or abuse, false or  
4156 misleading representations, and unfair practices in the Fair  
4157 Debt Collections Practices Act, 15 U.S.C. ss. 1692d, 1692e, and  
4158 1692f. A violation of this subsection is a deceptive and unfair  
4159 trade practice and constitutes a violation of the Deceptive and  
4160 Unfair Trade Practices Act under part II of chapter 501. In  
4161 addition, a licensee must comply with the applicable provisions  
4162 of the Consumer Collection Practices Act under part V ~~VI~~ of  
4163 chapter 559, including s. 559.77.

4164 Section 120. Subsection (2) of section 560.406, Florida  
4165 Statutes, is amended to read:

4166 560.406 Worthless checks.—

4167 (2) If a check is returned to a deferred presentment  
4168 provider from a payor financial institution due to insufficient  
4169 funds, a closed account, or a stop-payment order, the deferred  
4170 presentment provider may pursue all legally available civil  
4171 remedies to collect the check, including, but not limited to,  
4172 the imposition of all charges imposed on the deferred  
4173 presentment provider by the financial institution. In its  
4174 collection practices, a deferred presentment provider must  
4175 comply with the prohibitions against harassment or abuse, false  
4176 or misleading representations, and unfair practices that are



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4177 contained in the Fair Debt Collections Practices Act, 15 U.S.C.  
4178 ss. 1692d, 1692e, and 1692f. A violation of this act is a  
4179 deceptive and unfair trade practice and constitutes a violation  
4180 of the Deceptive and Unfair Trade Practices Act under part II of  
4181 chapter 501. In addition, a deferred presentment provider must  
4182 comply with the applicable provisions of the Consumer Collection  
4183 Practices Act under part V ~~VI~~ of chapter 559, including s.  
4184 559.77.

4185 Section 121. Subsection (5) of section 634.271, Florida  
4186 Statutes, is amended to read:

4187 634.271 Civil remedy.—

4188 (5) The penalty provisions in s. 521.006 ~~ss. 520.12 and~~  
4189 ~~521.006~~, as well as the statutory penalty in subsection (1), do  
4190 not apply to any violation of this part or chapters 520 and 521  
4191 relating to or in connection with the sale or failure to  
4192 disclose in a retail installment contract or lease, before ~~prior~~  
4193 ~~to~~ April 23, 2002, of a vehicle protection product, or contract  
4194 or agreement that provides for payment of vehicle protection  
4195 expenses, as defined in s. 634.011(8)(b)1., so long as the sale  
4196 of such product, contract, or agreement was otherwise disclosed  
4197 to the consumer in writing at the time of the purchase or lease.  
4198 However, in the event of a violation for which such statutory  
4199 penalties do not apply, the court shall award actual damages and  
4200 costs, including reasonable attorney ~~attorney's~~ fees. This  
4201 ~~Nothing in this subsection does not shall be construed to~~  
4202 require the application of the referenced statutory penalty  
4203 provisions where this subsection is not applicable.

4204 Section 122. Subsection (18) of section 681.102, Florida  
4205 Statutes, is amended to read:

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4206           681.102 Definitions.—As used in this chapter, the term:  
 4207           (18) "Purchase price" means the cash price as defined in s.  
 4208 520.31(2), inclusive of any allowance for a trade-in vehicle,  
 4209 but excludes debt from any other transaction. The term "any  
 4210 allowance for a trade-in vehicle" means the net trade-in  
 4211 allowance as reflected in the purchase contract or lease  
 4212 agreement if acceptable to the consumer and manufacturer. If  
 4213 such amount is not acceptable to the consumer and manufacturer,  
 4214 ~~then~~ the trade-in allowance shall be ~~an amount~~ equal to 100  
 4215 percent of the retail price of the trade-in vehicle as reflected  
 4216 in the NADA Official Used Car Guide (Southeastern Edition) or  
 4217 NADA Recreation Vehicle Appraisal Guide, whichever is  
 4218 applicable, in effect at the time of the trade-in. The  
 4219 manufacturer shall provide ~~be responsible for providing~~ the  
 4220 applicable NADA book.

4221           Section 123. Subsection (1) of section 687.12, Florida  
 4222 Statutes, is amended to read:

4223           687.12 Interest rates; parity among licensed lenders or  
 4224 creditors.—

4225           (1) Any lender or creditor licensed or chartered under  
 4226 ~~chapter 516, chapter 520,~~ chapter 657, chapter 658 or former  
 4227 chapter 659, former chapter 664 or former chapter 656, chapter  
 4228 665, or part XV of chapter 627; any lender or creditor located  
 4229 in this state and licensed or chartered under the laws of the  
 4230 United States and authorized to conduct a lending business; or  
 4231 any lender or creditor lending through a licensee under part III  
 4232 of chapter 494, is authorized to charge interest on loans or  
 4233 extensions of credit to any person as defined in s. 1.01, or to  
 4234 any firm or corporation, at the maximum rate of interest

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4235 permitted by law to be charged on similar loans or extensions of  
4236 credit made by any lender or creditor in this state, except that  
4237 the statutes governing the maximum permissible interest rate on  
4238 any loan or extension of credit, and other statutory  
4239 restrictions relating thereto, also govern the amount, term,  
4240 permissible charges, rebate requirements, and restrictions for a  
4241 similar loan or extension of credit made by any lender or  
4242 creditor.

4243 Section 124. Subsection (4) of section 697.05, Florida  
4244 Statutes, is amended to read:

4245 697.05 Balloon mortgages; scope of law; definition;  
4246 requirements as to contents; penalties for violations;  
4247 exemptions.—

4248 (4) This section does not apply to the following:

4249 (a) Any mortgage in effect before ~~prior to~~ January 1, 1960;

4250 (b) Any first mortgage, excluding a mortgage in favor of a  
4251 home improvement contractor defined in s. 520.61~~(13)~~ the  
4252 execution of which is required solely by the terms of a home  
4253 improvement contract that ~~which~~ is governed by the provisions of  
4254 ss. 520.60-520.98;

4255 (c) Any mortgage created for a term of 5 years or more,  
4256 excluding a mortgage in favor of a home improvement contractor  
4257 defined in s. 520.61~~(13)~~ the execution of which is required  
4258 solely by the terms of a home improvement contract that ~~which~~ is  
4259 governed by the provisions of ss. 520.60-520.98;

4260 (d) Any mortgage, the periodic payments on which are to  
4261 consist of interest payments only, with the entire original  
4262 principal sum to be payable upon maturity;

4263 (e) Any mortgage securing an extension of credit in excess

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4264 of \$500,000;

4265 (f) Any mortgage granted in a transaction covered by the  
4266 federal Truth in Lending Act, 15 U.S.C. ss. 1601 et seq., in  
4267 which each mortgagor thereunder is furnished a Truth in Lending  
4268 Disclosure Statement that satisfies the requirements of the  
4269 federal Truth in Lending Act; or

4270 (g) Any mortgage granted by a purchaser to a seller  
4271 pursuant to a written agreement to buy and sell real property  
4272 which provides that the final payment of said mortgage debt will  
4273 exceed the periodic payments thereon.

4274 Section 125. Paragraph (d) of subsection (3) of section  
4275 721.11, Florida Statutes, is amended to read:

4276 721.11 Advertising materials; oral statements.—

4277 (3) The term "advertising material" does not include:

4278 (d) Any audio, written, or visual publication or material  
4279 relating to the promotion of the availability of any  
4280 accommodations or facilities, or both, for transient rental,  
4281 including any arrangement governed by part X ~~part XI~~ of chapter  
4282 559, so long as a mandatory tour of a timeshare plan or  
4283 attendance at a mandatory sales presentation is not a term or  
4284 condition of the availability of such accommodations or  
4285 facilities, or both, and so long as the failure of any transient  
4286 renter to take a tour of a timeshare plan or attend a sales  
4287 presentation does not result in the transient renter receiving  
4288 less than what was promised to the transient renter in such  
4289 materials.

4290 Section 126. Subsection (1) of section 832.10, Florida  
4291 Statutes, is amended to read:

4292 832.10 Alternative to bad check diversion program; fees for

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4293 collection.—

4294 (1) Before ~~Prior to~~ presenting a complaint about a  
4295 dishonored check to a state attorney, a payee on such bad check  
4296 may place or assign the debt evidenced by the bad check for  
4297 collection pursuant to this section by a private debt collector  
4298 ~~registered under part VI of chapter 559.~~

4299 Section 127. Section 938.35, Florida Statutes, is amended  
4300 to read:

4301 938.35 Collection of court-related financial obligations.—  
4302 The board of county commissioners or the governing body of a  
4303 municipality may pursue the collection of any fees, service  
4304 charges, fines, or costs to which it is entitled which remain  
4305 unpaid for 90 days or more, or refer the account to a private  
4306 attorney who is a member in good standing of The Florida Bar or  
4307 to a collection agent ~~who is registered and in good standing~~  
4308 ~~pursuant to chapter 559.~~ In pursuing the collection of such  
4309 unpaid financial obligations through a private attorney or  
4310 collection agent, the board of county commissioners or the  
4311 governing body of a municipality must determine that this is  
4312 cost-effective, and the board or the governing body must follow  
4313 applicable procurement practices. The collection fee, including  
4314 any reasonable attorney ~~attorney's~~ fee, paid to any attorney or  
4315 collection agent retained by the board of county commissioners  
4316 or the governing body of a municipality may be added to the  
4317 balance owed, in an amount not to exceed 40 percent of the  
4318 amount owed at the time the account is referred to the attorney  
4319 or agent ~~agents~~ for collection.

4320 Section 128. This act shall take effect July 1, 2012.