

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

**BILL:** CS/SB 644

**INTRODUCER:** Banking and Insurance Committee and Senator Richter

**SUBJECT:** Licensure by the Office of Financial Regulation

**DATE:** April 9, 2013                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	<b>Fav/CS</b>
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Favorable</b>
3.	<u>Sadberry</u>	<u>Sadberry</u>	<u>ACJ</u>	<b>Favorable</b>
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

A. COMMITTEE SUBSTITUTE.....  Statement of Substantial Changes

B. AMENDMENTS.....  Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

**I. Summary:**

CS/SB 644 allows the Office of Financial Regulation (OFR) to exercise discretion regarding whether to deny an application for licensure as a mortgage broker or mortgage lender if the applicant’s licensure or its equivalent was revoked in any jurisdiction. Current law requires the automatic denial of the licensure application. The bill also changes the method by which the OFR collects fingerprints from applicants for registration as securities dealers, associated persons, or securities issuers and applicants for money services business licensure. The new method of fingerprinting is live-scan processing. Money services business initially approved for licensure before October 1, 2013, must re-submit fingerprints for live scan processing in order to obtain a renewed license set to expire between April 30, 2014, and December 31, 2015.

The Department of Law Enforcement would see an insignificant reduction in the amount of revenue generated from the fees for collecting fingerprints. The department has indicated the fiscal impact would be insignificant on their operations.

Sections 1, 2 and 6 of the bill are effective upon becoming law; the other sections of the bill are effective October 1, 2013.

This bill substantially amends the following sections of the Florida Statutes: 494.00321, 494.00611, 517.12, 560.141, and 560.143.

## II. Present Situation:

### Licensure as a Mortgage Broker or Mortgage Lender

The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 sets a minimum federal standard that an individual who is an applicant for a state loan originator license must have never had his or her loan originator license revoked in any governmental jurisdiction.<sup>1</sup> In 2009, Florida adopted this requirement for loan originators in s. 494.00312(5), F.S.<sup>2</sup> Florida also adopted parallel requirements for persons (employers, businesses, and individuals) who are applicants for licenses as mortgage brokers and mortgage lenders, exceeding the federal requirement.

According to representatives from the Office of Financial Regulation, the issue that has arisen is that states may use the term “revoked” differently. In Florida, if a licensee does not timely complete the annual renewal or pay the annual fee, their license “expires” on December 31. In other states, if the licensee does not pay that state’s annual assessment when due, the regulatory process may be to administratively revoke the permanent license. Therefore, because the license status will be “revoked” in the other state, it would cause the Florida license to be revoked, or a new license application in Florida to be denied, under current law.<sup>3</sup>

### Office of Financial Regulation Fingerprint Requirements

Under ch. 517, F.S., no dealer, associated person, or issuer of securities may sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, without being registered with the OFR. Under ch. 560, F.S., persons engaged in business as a money services business (payment instrument seller, foreign currency exchanger, check casher, or money transmitter) must be licensed with the Office. The application for such registration or licensure requires the applicant to submit fingerprint cards that are subsequently processed by the Florida Department of Law Enforcement (FDLE) and Federal Bureau of Investigation (FBI). The FDLE and FBI no longer accept physical fingerprint cards; they now only accept electronic or live-scan fingerprints for processing.<sup>4</sup>

## I. Effect of Proposed Changes:

**Section 1** amends s. 494.00321(5), F.S., to allow the OFR discretion regarding whether to deny an application for mortgage broker licensure if the applicant has had a mortgage broker license, or its equivalent, revoked in any jurisdiction. Current law requires denial of the application.

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<sup>1</sup> See 12 U.S.C. Sec. 5104(b)(1).

<sup>2</sup> See Ch. 2009-241, L.O.F.

<sup>3</sup> Information for this paragraph comes from Analysis of SB 644, Office of Financial Regulation, Financial Services Commission (dated March 26, 2013) (on file with the Committee on Criminal Justice). This analysis is further cited as “OFR Analysis.”

<sup>4</sup> *Id.*

**Section 2** amends s. 494.00611(5), F.S., to allow the OFR discretion regarding whether to deny an application for mortgage lender licensure if the applicant has had a mortgage broker license, or its equivalent, revoked in any jurisdiction. Current law requires denial of the application.

**Section 3** amends s. 517.12(7), F.S., to require securities dealers, associated persons, or securities issuers to submit the fingerprints for live scan processing as part of the mandatory requirement to register with the OFR. The costs of fingerprint processing are borne by the person subject to the background check. Under current law, a fingerprint card of a complete set of fingerprints must be taken by an authorized law enforcement agency or in a manner otherwise approved by rule, and the cost of the fingerprint processing may be borne by the OFR, the employer, or the person subject to the background check.

**Section 4** amends s. 560.141, F.S., to require the applicant for money services business licensure to submit the fingerprints for live scan processing as part of the mandatory licensure requirements to register with the OFR. Money services business initially approved for licensure before October 1, 2013, must re-submit fingerprints for live scan processing in order to obtain a renewed license set to expire between April 30, 2014, and December 31, 2015.

The bill also requires the fingerprints to be entered into the statewide automated fingerprint identification system. The OFR must pay an annual fee to the Department of Law Enforcement to participate in the system. The costs of fingerprint processing are borne by the person subject to the background check. Under current law, a fingerprint card of a complete set of fingerprints must be taken by an authorized law enforcement agency, and the cost of the fingerprint processing may be borne by the OFR, the employer, or the person subject to the background check.

**Section 5** amends s. 560.143, F.S., to provide that OFR fingerprint retention fees are prescribed by rule.

**Section 6** provides effective dates. Sections 1, 2 and 6 of the bill are effective upon becoming law; the other sections of the bill are effective October 1, 2013.

## II. **Constitutional Issues:**

### A. Municipality/County Mandates Restrictions:

None.

### B. Public Records/Open Meetings Issues:

None.

### C. Trust Funds Restrictions:

None.

### III. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

The provision of the Committee Substitute requiring currently licensed money services businesses to submit to live-scan fingerprinting may result in additional fees imposed on persons required to undergo live-scan fingerprinting.

The Florida Department of Law Enforcement has provided the following information regarding private sector impact:

Year 1: 500 new applicants x \$40.50 + 725 license renewals x \$40.50 = \$49,613

Year 2: 500 new applicants x \$40.50 + 1450 license renewals x \$40.50 + 1225 fingerprints retained x \$6 = \$86,325

Year 3: 500 new applicants x \$40.50 + 725 license renewals x \$40.50 + 3175 fingerprints retained x \$6 = \$ 68,663

Each request is \$40.50; \$24 goes into the FDLE Operating Trust Fund; \$16.50 from each request is forwarded to the FBI; not revenue for Florida; but expense for private sector.<sup>5</sup>

#### C. Government Sector Impact:

The Office of Financial Regulation currently collects fingerprint fees from applicants that are subsequently transferred to the Florida Department of Law Enforcement. Switching from fingerprint cards to live-scan fingerprint processing is estimated to result in the following reductions for Fiscal Year 2013-2014:

- A reduction of \$13,275 related to fingerprinting required under ch. 494, F.S. (mortgage brokers and mortgage lenders) and ch. 560, F.S. (money services businesses). The estimated non-operating budget authority needed in Category 310175 is reduced by \$95,000.
- A reduction of \$121,500 related to elimination of the processing fee for fingerprinting. The estimated non-operating budget authority needed in category 310175 is reduced by \$150,000.<sup>6</sup>

The provision of the Committee Substitute requiring currently licensed money services businesses to submit to live-scan fingerprinting may alter the fiscal impact of the bill.

<sup>5</sup> Analysis of SB 644 (dated March 20, 2013), Florida Department of Law Enforcement (on file with the Committee on Criminal Justice).

<sup>6</sup> Telephonic conversation with OFR staff on March 26, 2013, and OFR Analysis.

The Florida Department of Law Enforcement has provided the following information regarding fiscal impact:

		(FY 13-14)	(FY 14-15)	(FY 15-16)
		Amount/FTE	Amount/FTE	Amount/FTE
A.	Revenues      OTF	29,400	54,150	48,450

Year 1: 500 new applicants x \$24 + 725 license renewals x \$24 = \$29,400

Year 2: 500 new applicants x \$24 + 1450 license renewals x \$24 + 1225 fingerprints retained x \$6 = \$54,150

Year 3: 500 new applicants x \$24 + 725 license renewals x \$24 + 3175 fingerprints retained x \$6 = \$ 48,450<sup>7</sup>

**IV. Technical Deficiencies:**

None.

**V. Related Issues:**

None.

**VI. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
 (Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Banking and Insurance on March 20, 2013:**

- Money services business initially approved for licensure before October 1, 2013, must re-submit fingerprints for live scan processing in order to obtain a renewed license set to expire between April 30, 2014, and December 31, 2015.
- Eliminates the repeal of s. 560.143(1)(f), F.S.
- Specifies that the OFR fingerprint retention fees will be prescribed by rule.

- B. **Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

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<sup>7</sup> *Id.*