

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 665 Licensure by Office of Financial Regulation

**SPONSOR(S):** Insurance & Banking Subcommittee; La Rosa

**TIED BILLS:**           **IDEN./SIM. BILLS:** SB 644

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	12 Y, 0 N, As CS	Bauer	Cooper
2) Government Operations Appropriations Subcommittee	12 Y, 0 N	Keith	Topp
3) Regulatory Affairs Committee			

### SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) administers Florida laws and rules governing the licensure and regulation of individuals and entities in the non-depository mortgage, securities, and money services business industries. This bill proposes the following changes to several statutes under the OFR's jurisdiction:

- Current law requires the OFR to deny an application for a mortgage broker or mortgage lender license when the applicant has had an equivalent license revoked in another state. This has resulted in the OFR having to deny some mortgage company licenses where the applicant's out-of-state revocation was due to purely administrative reasons, such as an expired license. The bill eliminates the mandatory language in current law, and gives the OFR discretion to review an applicant's out-of-state mortgage company revocations on a case-by-case basis. The bill provides that these provisions will be effective upon becoming a law.
- Current law requires applicants for securities and money services business licenses to submit fingerprint cards to the OFR for state and federal criminal background checks in order for the OFR to determine an applicant's fitness for licensure. However, the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation, who conduct these background checks, no longer accept physical fingerprint cards for processing and now process fingerprints electronically or through the live-scan system through contracted vendors throughout the state. This bill amends various provisions to require securities and money services business license applicants to submit electronic or live-scan fingerprints and pay the processing costs to the live-scan vendor. The bill also provides that the fingerprints of money services business applicants be entered into and retained in FDLE's database, the cost of which would be collected by OFR and submitted to FDLE.

The bill has an insignificant fiscal impact on state government expenditures. The OFR would no longer be responsible for the collection and transfer of fingerprint processing fees to FDLE. However, OFR would collect and transfer to FDLE the fingerprint retention fees paid to OFR at initial licensing and renewal by money services business at \$6, per year. The fingerprint retention fee, after collection by OFR, would be transferred to FDLE. The OFR's workload eliminated as a result of not processing fingerprint cards is minimal.

The bill provides for an effective date of October 1, 2013, except as otherwise expressly provided.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background: The Office of Financial Regulation (OFR)**

The OFR regulates and licenses a wide range of entities and individuals in the banking, securities, and consumer finance industries. For purposes of HB 665, some of the licensing and enforcement programs that OFR administers are:

- Non-depository mortgage loan originators, brokers, and lenders (Chapter 494, F.S.);
- Money services businesses (MSBs), which include check cashers, foreign currency exchangers, and deferred presentment providers (Chapter 560, F.S.);
- Securities dealers, issuer dealers, investment advisers, and branch offices (Chapter 517, F.S.).

Pursuant to s. 20.121(3)(a), F.S., the Financial Services Commission (the Governor and Cabinet) serves as the agency head for purposes of rulemaking and appoints the OFR's Commissioner, who serves as the agency head for purposes of final agency action for all areas within the OFR's regulatory authority.

#### **Current Situation: Licensure Revocation**

The federal Secure and Fair Enforcement for Mortgage Licensing Act of 2008<sup>1</sup> sets forth minimum standards for state-licensed individual loan originators. One requirement is 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 other governmental jurisdiction.<sup>2</sup> In 2009, the Florida Legislature adopted the minimum requirements of the SAFE Act, including this requirement for loan originators in s. 494.00312(5), F.S.<sup>3</sup> In addition, Florida exceeded the federal requirements by adopting parallel requirements for mortgage company licenses (i.e., mortgage brokers and mortgage lenders), thereby mandating the OFR to deny licensure to any mortgage lender or mortgage broker applicant who has had an equivalent license revoked in another state, regardless of the underlying reason.<sup>4</sup>

Since the enactment of this requirement, the OFR has encountered situations where other states interpret the term "revoked" differently. For example, Florida uses an annual renewal and fee process. If a Florida mortgage licensee does not timely complete their annual renewal or pay the annual fee, the license "expires" on December 31 and the person must apply for a new license in order to continue conducting mortgage business lawfully. On the other hand, other states may use a permanent license with an annual assessment. If the licensee decides it wants to discontinue doing its licensed business in the other state and does not pay that state's annual assessment when due, the other state's 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 a Florida mortgage license application in Florida to be denied under current law, even though the underlying reason was technical or ministerial in nature.<sup>5</sup>

#### **Effect of HB 665 on License Revocation**

The bill amends ss. 494.00321 and 494.00611, F.S. to provide the OFR discretion in denying applicants a mortgage broker and mortgage lender license, respectively, if the applicant has had an equivalent license revoked in another jurisdiction. This allows the OFR to consider out-of-state company revocations on a case-by-case basis in determining applicants' fitness for mortgage broker or mortgage lender licensure. The bill provides that these changes are effective upon becoming a law.

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<sup>1</sup> 12 U.S.C. § 4501 et seq.

<sup>2</sup> 12 U.S.C. § 5104(b)(1).

<sup>3</sup> Chapter 2009-241, L.O.F.

<sup>4</sup> Sections 494.00321(5) and 494.00611(5), F.S.

<sup>5</sup> Bill analysis from the OFR (dated March 6, 2013), on file with the Government Operations Appropriations Subcommittee staff.

The bill does not affect the OFR's discretion and authority under current law to impose disciplinary action on existing mortgage lender or mortgage broker licensees who have equivalent licenses revoked in other states.<sup>6</sup>

The bill provides that these provisions shall take effect upon becoming a law.

### **Current Situation: Fingerprinting for Securities and MSB Applicants**

Under Chapter 517, F.S., no dealer, associated person, or issuer of securities is authorized to 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. The application for such registration requires dealers, investment advisers, and associated persons to submit fingerprint cards, which are then processed by the Florida Department of Law Enforcement (FDLE) for state criminal background checks and Federal Bureau of Investigation (FBI) for federal criminal background checks. These background checks enable the OFR to determine an applicant's fitness for registration in accordance with Chapter 517, F.S. Currently, the fingerprint processing fee for securities applicants is \$40.50.<sup>7</sup> The cost of the processing may be borne by the OFR, the employer, or the person subject to the background check.<sup>8</sup>

Under Chapter 560, F.S., persons engaged in business as a money services business must be licensed with the OFR.<sup>9</sup> The application for such license requires each officer, director, responsible person, the compliance officer, each controlling shareholder, and any other person who has a controlling interest in the money services business to submit a fingerprint card, which is processed by the FDLE and FBI for state and federal criminal background checks.<sup>10</sup> Applicants that are publicly traded corporations are not required to submit individual fingerprints. These background checks enable the OFR to determine an applicant's fitness for licensure in accordance with Chapter 560, F.S. MSB applicants are required to pay non-refundable fingerprint fees to the OFR as prescribed by rule.<sup>11</sup> The fingerprint fee is currently \$40.50 per person.<sup>12</sup> The cost of the processing may be borne by the Office, the employer, or the person subject to the background check.<sup>13</sup>

Currently, the OFR collects fingerprint cards and fingerprint processing fees from Securities and MSB applicants, and mails them to FDLE. Effective April 2012, the FDLE and FBI have discontinued accepting physical fingerprint cards and now process fingerprints electronically or via live-scan technology. Live-scan fingerprints are taken on glass plates and electronically scanned, enabling more legible prints and shorter processing times than traditional ink-and-paper fingerprinting yields.<sup>14</sup> Currently, there are 120 FDLE-approved live-scan service providers in the state which submit electronic prints to FDLE for processing.<sup>15</sup> The average cost to obtain live-scan fingerprints from an approved live-scan service provider is \$57.75.<sup>16</sup>

### **Effect of HB 665 on Fingerprinting for Securities and MSB Applicants**

The bill removes the requirement that securities and MSB applicants submit fingerprint "cards," and replaces it with the requirement that applicants submit their fingerprints for live-scan processing in accordance with the rules adopted by the Financial Services Commission. With live-scan fingerprints, the applicants would pay the processing fee directly to the vendor, who in turn pays FDLE for the background checks. The OFR would no longer have to collect fingerprint processing fees from

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<sup>6</sup> Section 494.00255(1)(n), F.S.

<sup>7</sup> Rule 69W-600.006, F.A.C.

<sup>8</sup> Section 517.12(7), F.S.

<sup>9</sup> Sections 560.204, 560.303, and 560.403, F.S.

<sup>10</sup> Section 560.141(1)(b)2., F.S.

<sup>11</sup> Section 560.143(1)(f), F.S.

<sup>12</sup> Form OFR-560-01, Application for Licensure as a Money Services Business, incorporated by reference in Rule 69V-560.102, F.A.C.

<sup>13</sup> Section 560.141(1)(b)2., F.S.

<sup>14</sup> Background information from OFR (dated February 25, 2013), on file with Insurance & Banking Subcommittee staff.

<sup>15</sup> FDLE Livescan Service Providers and Device Vendors, at <http://www.fdle.state.fl.us/Content/getdoc/941d4e90-131a-45ef-8af3-3c9d4efefd8e/Livescan-Service-Providers-and-Device-Vendors.aspx> (last accessed February 21, 2013).

<sup>16</sup> Information provided by OFR (February 21, 2013); on file with the Insurance & Banking Subcommittee staff.

applicants. The bill states that the cost of the processing shall be borne by the person subject to the background check, which can vary depending on the live-scan service provider's rates.

The bill deletes a requirement in current law<sup>17</sup> that MSB applicants submit non-refundable fingerprint processing fees, as prescribed by rule, with their initial applications for licensure to OFR. This provision is unnecessary since the bill requires MSB applicants to pay fingerprint processing fees directly to the live-service provider.

For MSBs applicants only, all fingerprints electronically submitted to the FDLE will be entered into and retained in the statewide automated fingerprint identification system, which provides for immediate notification if an individual is arrested in Florida. The cost of retaining fingerprints, which is currently \$6 per year per applicant,<sup>18</sup> shall be borne by the person subject to the background check.<sup>19</sup> The bill provides that MSB applicants and licensees must submit fingerprint retention fees, as set by rule, to the OFR upon initial application and renewal. The bill requires the OFR to pay an annual fee to FDLE to participate in this system and to inform FDLE of any person whose fingerprints are no longer required to be retained, such as a control person on an expired license.<sup>20</sup>

The bill also provides that MSBs who become licensed after the bill's effective date (October 1, 2013) must submit fingerprints for live-scan processing before seeking license renewal between April 30, 2014 and December 31, 2015. This provision will ensure that all new and existing MSB licensees' fingerprints are retained in the statewide automatic fingerprint identification system.

The bill provides that these changes are effective October 1, 2013.

#### B. SECTION DIRECTORY:

**Section 1.** Amends s. 494.00321, F.S., to authorize, rather than require, the OFR to deny a mortgage broker license application if the applicant had a mortgage broker license previously revoked in another jurisdiction.

**Section 2.** Amends s. 494.00611, F.S., to authorize, rather than require, the OFR to deny a mortgage lender license application if the applicant had a mortgage lender license previously revoked in another jurisdiction.

**Section 3.** Amends s. 517.12, F.S., to revise the procedures and requirements for submitting fingerprints as part of an application to sell or offer to sell securities; removes conflicting language.

**Section 4.** Amends s. 560.141, F.S. revise the procedures and requirements for submitting fingerprints for a money services business license; requires the OFR to pay an annual fee to the Department of Law Enforcement; removes conflicting language.

**Section 5.** Repeals s. 560.143(1)(f), F.S., relating to fingerprint fees when applying for a money services business license.

**Section 6.** Provides that the act shall take effect October 1, 2013, except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

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<sup>17</sup> Section 560.143(1)(f), F.S.

<sup>18</sup> FDLE Criminal History Record Checks/Background Checks Fact Sheet, dated October 7, 2011.

<sup>19</sup> MSBs licensees would pay \$12 once every two years, since MSB licenses are issued and renewed on a two-year cycle. Sections 560.141(2) and 560.142, F.S.

<sup>20</sup> According to information provided by OFR, the bill does not include fingerprint retention for securities applicants, since the majority of securities registrants do not reside in Florida.

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments below.

2. Expenditures:

The bill is expected to have an insignificant fiscal impact on OFR expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Securities and MSB applicants currently pay \$40.50 to have a physical fingerprint card processed for state and federal criminal background checks. Live-scan fingerprint processing costs generally range from between \$50 to \$65, depending on the vendor, and average \$57.75.

Easing the restriction on out-of-state mortgage lender and mortgage broker license revocations may result in more mortgage company licenses issued in Florida.

D. FISCAL COMMENTS:

Currently, the OFR collects a paper fingerprint card and the fingerprint fee from money services business and securities applicants. The fingerprint fee is collected as revenue and deposited into the Regulatory Trust Fund. The whole fee is then transferred on to the FDLE.

The bill would require applicants to obtain and submit their fingerprints electronically through a live-scan vendor. The applicants would pay the vendor, who would then pay FDLE for the background check. Thus, the OFR would no longer have to collect fingerprinting fees from applicants, nor would they have the expenses of doing so. Currently the OFR has 1.00 FTE in the Division of Securities Regulation and 1.00 FTE in the Division of Financial Regulation that process fingerprint cards, which is approximately 5% of their daily workload. During FY 2012-13, the OFR went through a considerable reorganization of work duties and reduced the agency's FTE count by 18.5% in the process. With the reorganization of duties, the workload eliminated as a result of not processing fingerprint cards is minimal.

Fingerprint *retention* fees only apply to new money services businesses that apply for licensure after October 1, 2013, and have submitted electronic fingerprints. The OFR estimates that 500 new sets of fingerprints are retained each year, based on historical fingerprint card submissions. The current annual retention cost charged by the FDLE is \$6 per set of fingerprints. The OFR would collect fingerprint retention fees from licensees during the application and renewal process, and submit those fees to FDLE. The OFR would transfer an estimated \$99,000 in fingerprint retention fees annually to FDLE.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

If enacted, the administrative rules governing fingerprint fees for MSB and securities applicants (Chapters 69V-560 and 69W-600, F.A.C., respectively) will need to be updated to reflect the live-scan fingerprinting processes.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 6, 2013, the Insurance and Banking Subcommittee adopted two amendments and reported the bill favorably as a committee substitute. One amendment provided that money services businesses that become initially licensed before the bill's effective date (October 1, 2013) must submit fingerprints for live-scan processing before seeking license renewal between April 30, 2014 and December 31, 2015. The second amendment restored current statutory language regarding licensing fees for money services businesses, and clarified that applicants and licensees must submit fingerprint retention fees, as prescribed by rule, to the OFR upon initial application and renewal. This analysis is drafted to the committee substitute as passed by the Insurance and Banking Subcommittee.