

By the Committee on Rules; and Senator Garcia

595-03287-18

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1                   A bill to be entitled  
2       An act relating to mortgage regulation; amending s.  
3       494.001, F.S.; defining the term "business purpose  
4       loan"; amending s. 494.00115, F.S.; defining the term  
5       "hold himself or herself out to the public as being in  
6       the mortgage lending business"; amending s. 494.0025,  
7       F.S.; prohibiting the misrepresentation of a  
8       residential mortgage loan as a business purpose loan;  
9       reenacting s. 494.0018, F.S., relating to penalties,  
10      to incorporate the amendment made to s. 494.0025,  
11      F.S., in a reference thereto; providing an effective  
12      date.

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

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16       Section 1. Present subsections (4) through (37) of section  
17       494.001, Florida Statutes, are redesignated as subsections (5)  
18       through (38), respectively, and a new subsection (4) is added to  
19       that section, to read:

20       494.001 Definitions.—As used in this chapter, the term:  
21       (4) "Business purpose loan" means a mortgage loan, the  
22       proceeds of which the borrower intends to use primarily for a  
23       business purpose and not primarily for a personal, family, or  
24       household purpose. In determining if the loan is for a business  
25       purpose, a person must refer to the official interpretation by  
26       the Consumer Financial Protection Bureau of 12 C.F.R. s.  
27       1026.3(a).

28       Section 2. Subsection (4) is added to section 494.00115,  
29       Florida Statutes, to read:

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30 494.00115 Exemptions.—

31 (4) As used in this section, the term "hold himself or  
32 herself out to the public as being in the mortgage lending  
33 business" includes any of the following:

34 (a) Representing to the public, through advertising or  
35 other means of communicating or providing information, including  
36 the use of business cards, stationery, brochures, signs, rate  
37 lists, or promotional items, by any method, that such individual  
38 can or will perform the activities described in s. 494.001(24).

39 (b) Soliciting in a manner that would lead the intended  
40 audience to reasonably believe that such individual is in the  
41 business of performing the activities described in s.  
42 494.001(24).

43 (c) Maintaining a commercial business establishment at  
44 which, or premises from which, such individual regularly  
45 performs the activities described in s. 494.001(24) or regularly  
46 meets with current or prospective mortgage borrowers.

47 (d) Advertising, soliciting, or conducting business through  
48 the use of a name, trademark, service mark, trade name, Internet  
49 address, or logo that indicates or reasonably implies that the  
50 business being advertised, solicited, or conducted is of the  
51 kind or character of business transacted or conducted by a  
52 licensed mortgage lender or is likely to lead any person to  
53 believe that such business is that of a licensed mortgage  
54 lender.

55 Section 3. Subsection (4) of section 494.0025, Florida  
56 Statutes, is amended to read:

57 494.0025 Prohibited practices.—It is unlawful for any  
58 person:

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59 (4) In any practice or transaction or course of business  
60 relating to the sale, purchase, negotiation, promotion,  
61 advertisement, or hypothecation of mortgage loan transactions,  
62 directly or indirectly:

63 (a) To knowingly or willingly employ any device, scheme, or  
64 artifice to defraud;

65 (b) To engage in any transaction, practice, or course of  
66 business which operates as a fraud upon any person in connection  
67 with the purchase or sale of any mortgage loan; ~~or~~

68 (c) To obtain property by fraud, willful misrepresentation  
69 of a future act, or false promise; or

70 (d) To misrepresent a residential mortgage loan, as  
71 described in s. 494.001(25)(a), as a business purpose loan.

72 Section 4. For the purpose of incorporating the amendment  
73 made by this act to section 494.0025, Florida Statutes, in a  
74 reference thereto, section 494.0018, Florida Statutes, is  
75 reenacted to read:

76 494.0018 Penalties.—

77 (1) Whoever knowingly violates any provision of s.  
78 494.0025(1)(a), (b), or (c) or s. 494.0025(1), (2), (3), (4),  
79 or (5), except as provided in subsection (2) of this section,  
80 commits a felony of the third degree, punishable as provided in  
81 s. 775.082, s. 775.083, or s. 775.084. Each such violation  
82 constitutes a separate offense.

83 (2) Any person who violates any provision of this chapter,  
84 in which the total value of money and property unlawfully  
85 obtained exceeds \$50,000 and there are five or more victims,  
86 commits a felony of the first degree, punishable as provided in  
87 s. 775.082, s. 775.083, or s. 775.084.

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Section 5. This act shall take effect July 1, 2019.