

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1896

SPONSOR: Banking and Insurance Committee and Senator Constantine

SUBJECT: Mortgage Brokers and Lenders

DATE: April 2, 2001

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>AGG</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The Department of Banking and Finance is responsible for administering the provisions of ch. 494, F.S., relating to the regulation of mortgage brokerage and mortgage lending. The bill establishes education requirements for those seeking initial licensure under part III of Chapter 494, F.S. (mortgage lending), and establishes continuing education requirements as a condition of renewal of licenses under part II (mortgage broker) and part III (mortgage lending) of Chapter 494 F.S.

An applicant for an initial mortgage lender license would be required to document 24 hours of classroom on primary and subordinate financing transactions. An applicant for an initial mortgage lender's license, or the applicant's principal representative, would be required to pass a written test adopted by the department to determine competency in primary and subordinate financing transactions. Mortgage brokers, mortgage lenders, and correspondent mortgage lenders would be required to complete at least 14 hours of professional education courses in primary and subordinate mortgage financing transaction biennially as a condition for license renewal.

An applicant for an initial mortgage lender license would be required to designate a "principal representative" within the mortgage lender business, which is comparable to the "principal broker" within a mortgage broker business, who has responsibility for exercising operational control of the licensee's business. The bill also requires that a mortgage broker be licensed for at least 1 year prior to being designated as a "principal broker" within the brokerage, or demonstrate that he/she has been actively engaged in mortgage-related business for at least 1 year prior to being designated as a principal broker.

Licenses would be required to maintain records documenting compliance with the education requirements for a period of 4 years.

This bill substantially amends the following sections of the Florida Statutes: 494.001, 494.00295, 494.0031, 449.0034, 494.0035, 494.0061, 494.0062, 494.0064, and 494.0067.

## **II. Present Situation:**

### **Mortgage Brokers and Lenders**

Chapter 494, F.S. governs mortgage brokerage and mortgage lending. Part I of Chapter 494, F.S., provides definitions and provisions that apply to the mortgage brokerage and mortgage lending industry. Part I also outlines the general powers and duties of the regulatory agency, the Department of Banking and Finance (“department”), lists prohibited practices, and provides penalties for violations of the act.

Part II of Chapter 494, F.S., provides the licensure and eligibility requirements for mortgage broker business and for mortgage brokers, individually. Section 494.003, F.S., exempts from the chapter certain financial entities (any bank, bank holding company, trust company, savings and loan association, savings bank, credit union, or consumer finance company licensed pursuant to ch. 516, F.S.) and certain federal associations. Separate licenses are required to operate a mortgage brokerage business, and to provide services as a mortgage broker and a mortgage lender. A mortgage broker business is required to designate a “principal broker” within the business, who has responsibility for exercising operational control of the licensee’s business. There is no corresponding “principle” designee for a mortgage lending business licensed pursuant to part III of ch. 494, F.S.

Part III of ch. 494, F.S., provides the licensure and eligibility requirements for mortgage lenders and for correspondent mortgage lenders. Section 494.006, F.S., outlines which entities are exempt from the requirements of this part and which entities are exempt from licensure under this part. Separate licenses are required to provide services as a mortgage lender and a correspondent mortgage lender. The substantive difference between a mortgage lender and a correspondent mortgage lender is that the latter cannot service loans.

### **Education Requirements for Licensure**

Part II of Chapter 494, F.S., provides for departmental permitting and for certification of mortgage brokerage schools. Persons, schools and other institutions may apply for a permit from the department to offer mortgage brokerage training courses as a condition of licensure as a mortgage broker. Accredited universities, community colleges, and technical schools that offer similar courses are exempted from the departmental permitting process. Permitted schools must comply with guidelines and rules established by the department. Currently there are 15 permitted schools and 13 colleges and universities in the state to serve the needs of mortgage broker applicants seeking licensure by the department.

Those seeking licensure as a mortgage broker must complete 24 hours of classroom education on primary and subordinate financing transactions and the laws and rules of Chapter 494, F.S., as a condition precedent for licensure.

## II. Effect of Proposed Changes:

**Section 1.** Amends s. 494.001, F.S., to create a definition for “principle representative” who is an individual who operates the business operations of a licensee under part III of Chapter 494, F.S., Mortgage Lender/Correspondence Mortgage Lender.

**Section 2.** Creates s. 494.00295, F.S., to establish a license renewal requirement that mortgage brokers or lender or correspondent lender or a principal representative of a mortgage lender must certify to the department at the time of renewal that all mortgage brokers, and the principal representative, loan originators, and associates of a mortgage lender or correspondent mortgage lender have completed at least 14 hours of professional education courses in primary and subordinate mortgage financing transactions and the provisions of ch. 494, F.S. Courses may only be provided by licensed mortgage business schools and may include electronically transmitted or distance-education courses. This section authorizes the department to adopt rules to implement this section.

**Section 3.** Transfers and renumbers s. 494.0311, F.S., as s. 494.0029, F.S., and amends that section by changing the name of the existing “mortgage brokerage school” as the “mortgage business school” throughout.

**Section 4.** Amends s. 494.0034, F.S., to require a licensee to certify to the department at the time of renewal that the education requirements have been met during the 2 years prior to an application for renewal as a condition for the renewal of a mortgage broker license.

**Section 5.** Amends s. 494.0035, F.S., requiring that a mortgage broker be licensed for at least 1 year prior to being designated as a “principal broker” or demonstrate to the department that he/she has been actively engaged in mortgage-related business for at least 1 year prior to such designation.

**Section 6.** Amends s. 494.0061, F.S., to establish additional license requirements for an initial mortgage lender license, mirroring like requirements for mortgage brokers. An applicant for an initial mortgage lender license is required to designate a “principal representative” within the mortgage lender business, which is comparable to the “principal broker” within a mortgage broker business, who has responsibility for exercising operational control of the licensee’s business.

An applicant for an initial mortgage lender license must submit and maintain a department-generated form that indicates the business’ designation and the individual’s acceptance of that responsibility. If the form is not available, inaccurate or incomplete, the department will deem the business to be operated under the control of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the business.

Effective October 1, 2001, an applicant for an initial mortgage lender license must document 24 hours of classroom instruction in primary and subordinate financing transactions. The applicant, or the designated principal representative, has 90 days after the filing date of the application in which to complete the required educational courses or the applicant’s license will be rendered inactive. Also, an applicant for an initial mortgage lender’s license, or the applicant’s principal representative, is required to pass a written test adopted by the department to determine competency in primary and subordinate financing transactions.

An applicant for an initial correspondent lender license must designate and maintain a form designating the personal representative. If the form is not available, inaccurate or incomplete, the department will deem the business to be operated under the control of each officer, director, or ultimate equitable owner of a 10-percent or greater interest in the business.

**Section 7.** Amends s. 494.0062, F.S., to establish additional license requirements for an initial correspondent mortgage lender license, effective October 1, 2001. The applicant or principal representative would be required to complete 24 hours of classroom instruction in the primary and subordinate financing transactions and the provisions of ch. 494, F.S., and pass a written test prescribed by the department.

**Section 8.** Amends s. 494.0064, F.S., to require licensees to submit with the renewal form proof that each licensed mortgage lender and each licensed correspondent mortgage lender has completed requisite continuing education requirements as a condition of license renewal.

**Section 9.** Amends s. 494.0067, F.S., to establish continuing education requirements for loan originators or associates of licensed mortgage lenders or correspondent lenders, effective October 1, 2002. At the time of the licensee's license renewal, loan originators or associates who perform services for the licensed entities are required to have completed 14 hours of professional education during the preceding 2 years. Licensees are required to document for the department the loan originators or associates' names, addresses, description of course content, the hours designated for each program, and the date and location of the programs. Licensees would also be required to maintain records of such training for a period of 4 years.

**Section 10.** Except as otherwise expressly provided, the provisions of this act take effect October 1, 2001.

### III. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

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

None.

#### C. Trust Funds Restrictions:

None.

### IV. Economic Impact and Fiscal Note:

#### A. Tax/Fee Issues:

None.

**B. Private Sector Impact:**

The continuing educational requirements would assist the mortgage brokers and lenders in this state in being informed regarding changes in the law and current issues.

Mortgage business schools, universities, and other schools that provide such courses would generate additional revenues due to the implementation of the additional continuing educational requirements for the estimated 16,000 loan originators and “principle representatives” who would need to complete the requisite course hours for FY 2001-02 and 30,000 mortgage brokers for FY 2002-03.

In addition, there exists the possibility of loss of revenue for mortgage lenders due to the requirement that a designated mortgage lender “principle representative” have 1 year experience prior to such designation. It is estimated that as many as 30,000 mortgage brokers will need to take continuing education courses prior to license renewal in FY 2002-2003, and will incur expenses estimated at \$125 per person (estimated cost of a 16 hour course). It is also estimated that 16,000 loan originators and principal representatives will incur expenses estimated at \$125 per person to meet education requirements, effective FY 2003-04. An annual average of 550 new mortgage companies apply for licensure with the department and these companies will incur expenses for initial licensure education requirements at \$175 per person (average cost of a 24 hour course). The department estimates private sector costs for obtaining the continuing education is \$96,250 for FY 2001-02, \$3,846,250 for FY 2002-03, and \$2,096,250 for FY 2003-04.

**C. Government Sector Impact:**

The bill requires that a principal broker of a mortgage brokerage business have 1-year experience. Presently there are approximately 400 applications submitted annually that do not meet this requirement and this may result in a 1-year delay in filing for these mortgage brokerage business licenses. According to the department, this would result in a loss of revenues for FY 01-02 of \$170,000.

**V. Technical Deficiencies:**

None.

**VI. Related Issues:**

None.

**VII. Amendments:**

None.