

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 381 CS Financial Entities and Transactions  
**SPONSOR(S):** Detert  
**TIED BILLS:** HB 627 **IDEN./SIM. BILLS:** CS/SB 304

---

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade &amp; Banking Committee</u>	<u>12 Y, 0 N, w/CS</u>	<u>Sheheane</u>	<u>Carlson</u>
2) <u>Finance &amp; Tax Committee</u>	<u>8 Y, 0 N</u>	<u>Levin</u>	<u>Diez-Arguelles</u>
3) <u>State Administration Appropriations Committee</u>	<u>6 Y, 1 N, w/CS</u>	<u>Rayman</u>	<u>Belcher</u>
4) <u>Commerce Council</u>	<u>9 Y, 0 N</u>	<u>Sheheane</u>	<u>Bohannon</u>
5) _____	_____	_____	_____

---

### SUMMARY ANALYSIS

The Financial Services Commission (the Commission) and its Office of Financial Regulations (the Office) administer the regulation of mortgage brokers and lenders, consumer financiers, retail installment sellers, and title loans and securities businesses. A number of provisions under each of these areas of its jurisdiction have been identified by the Office for clarification and revision to achieve more efficient governance.

This bill revises a number of regulatory provisions governing mortgage brokers and lenders. The bill provides for:

- Mandated electronic filing of required forms, documents, or files with a provision for hardship situations.
- Clarification that receipt of the appropriate fee is a condition of new and renewal license application completion and that grounds for disciplinary action exists if payment of the fee fails to clear.
- Revision of fingerprint card processing.
- Clarification of when a change in licensee control will trigger the need for a new license.
- Requirements for financial institutions to qualify for an exemption.
- Revision of testing procedures and fees.
- Increase in the filing fee for license transfers from \$500 to \$575.
- Increase in the fee for a credit check of a loan applicant from \$10 to \$25.
- Approval for branch application license.
- Revised accounting standards.
- A reconciliation of conflicts between the 2002 amendments to the Probate Code and provisions of the Banking Code relating to safe-deposit boxes.
- An award of attorney's fees and costs if, as the result of negligence, a mortgage lender fails to pay any tax or insurance premium and subsequently refuses to pay the difference between a lapsed insurance policy and a new policy required by law.
- A definition for "creditor contribution" as it relates to credit counseling services.
- An appropriation for fingerprinting and for Mortgage Broker testing.

Funding requirements for Fiscal Year 2005-06 are \$758,290 for fingerprint processing and \$717,154 for Mortgage Broker testing from the Regulatory Trust Fund, and \$12,015 for fingerprint processing from General Revenue within the Office of Financial Regulation.

The bill provides an effective date of October 1, 2005.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0381i.CC.doc  
**DATE:** 4/20/2005

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- The bill gives the Commission rulemaking authority to prescribe requirements and procedures for obtaining a technological or financial hardship exception relating to electronic filing of forms, rulemaking authority to include guidelines for the destruction, as well as, retention of certain records, the authority to charge for the processing of fingerprint cards.

Ensure Lower Taxes- The bill increases the application fee for license transfers for certain licensees; however, this increase makes licensing application fees consistent for all applicants. The bill allows for an increase in the fee for a credit check of a loan applicant from \$10 to \$25.

#### B. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

The Financial Services Commission (Commission) consists of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. The Commission is an independent entity housed within the Department of Financial Services. The Office of Insurance Regulation and the Office of Financial Regulation are under the commission.<sup>1</sup> The Office of Financial Regulation (Office) is responsible for all activities of the commission relating to the regulation of financial institutions, finance companies, securities industries, and money transmitters.<sup>2</sup>

Mortgage brokers and mortgage lenders are regulated under the provisions of Chapter. 494, F.S. Chapter 516, F.S., regulates consumer finance loans, which are loans of \$25,000 or less and for which the lender charges an interest rate of 18 percent or greater. Securities transactions are regulated under Chapter 517, F.S., which also includes the administration of the Securities Guaranty Fund (fund). This fund provides compensation to persons who have suffered monetary damages due to acts committed by a dealer or investment advisor and who meet the statutory requirements for compensation. The office also has regulatory authority over the following types of retail installment sales covered by Chapter 520, F.S.: motor vehicle sales financing, retail installment sales (the purchase of retail goods via installment payments), sales finance companies (companies that acquire home improvement contracts), home improvement contracts (financing for home improvement through home improvement contracts). Presently, if a mortgage lender fails to timely pay an insurance premium of a property owner, and the payment is not more than 90 days overdue, the insurer must reinstate the insurance policy retroactive to the date of cancellation under the provisions of s. 501.137, F.S. The lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy. If the premium payment is more than 90 days overdue, or if the insurer refuses to reinstate the policy, the lender must pay the difference between the cost of the previous insurance policy and a new, comparable policy for two years. There is no provision for the recovery of attorney's fees and costs by the property owner.

Chapter 537, F.S., the Florida Title Loan Act, regulates loans secured by the title to a motor vehicle. Chapter 560, F.S., the Money Transmitters' Code, regulates various money transmitters including payment instrument (check) sellers, foreign currency exchangers, check cashing, funds transmissions (via wire, electronic transfer, etc.), and deferred presentment (providing money in exchange for a person's check, which is to be held for a certain period of time).

---

<sup>1</sup> The Office of Insurance Regulation is responsible for the licensure and regulation of insurers and other risk bearing entities. s. 20.121(3), F.S.

<sup>2</sup> See s. 20.121(3), F.S.

## Proposed Changes

### **Sections 1-19: Mortgage Brokerage and Mortgage Lending**

**Section 1** amends s. 494.0011, F.S., to allow the Financial Services Commission (Commission) to adopt rules to require, rather than allow, mortgage brokers to submit forms, documents, and fees required by Chapter 494, F.S., electronically. The Commission must reasonably accommodate technological or financial hardship when adopting such rules and may prescribe the requirements and procedures for obtaining a technological or financial hardship exemption. The section also clarifies that a grant or denial of a license under Chapter 494, F.S., must be issued in accordance with the provisions of s. 120.60, F.S., which contains the license application procedures that generally apply to all state agencies in Florida.

**Section 2** amends s. 494.0016, F.S., to provide the Commission with rulemaking authority to prescribe the requirements for the destruction of books, accounts, records, and documents retained by the licensee after completion of the three year retention period for maintaining documents relating to expenses paid by a licensee on behalf of a borrower. Currently, the Commission has authority to prescribe by rule minimum records that must be maintained. Regardless of the three year retention period, if the Office of Financial Regulation (Office) identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of Chapter 494, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The Commission must prescribe by rule the documents that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

**Section 3** amends s. 494.0029, F.S., to provide that permit applications for mortgage business schools are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by Commission rule, a non-refundable \$500 application fee as currently required, and any other fee required by law or rule. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to toll.<sup>3</sup> The bill also states that permits issued under s. 494.0029, F.S., are not transferable or assignable. The bill requires all documents prescribed by commission rule to be submitted with the initial application or certification.

**Section 4** amends s. 494.00295, F.S., to clarify that the educational requirements contained in this section for mortgage brokers, mortgage lenders and correspondent mortgage lenders are for continuing education. The term “associates” is deleted from the educational requirements because associates are licensed mortgage lenders and must comply with the continuing education requirements of mortgage lenders.

**Section 5** amends s. 494.003, F.S., to provide that in order to be exempt from the mortgage brokerage requirements of ss. 494.003-494.0043, F.S., a state or federal chartered bank, trust company, savings and loan, savings bank, credit union or bank holding company must be regulated under the laws of any state or the federal government of the United States. Banks, bank holding companies, and their subsidiaries that are not regulated by the federal or state government of the United States will no longer qualify for exemptions. The section also clarifies that there is no licensing requirement under ss. 494.003-494.0043, F.S., for wholly-owned subsidiaries of “state or federal chartered” banks or savings and loans whose sole activity is to distribute the lending programs of “state or federal chartered” banks.

---

<sup>3</sup> S. 120.60(1), F.S., requires each agency to notify the applicant within 30 days of the receipt of an application of any error or omission or to supply additional information. The section requires every license application to be approved or denied within 90 days after receipt of a completed application.

**Section 6** amends s. 494.0031, F.S., to clarify that each person who acts as a mortgage brokerage business must be licensed pursuant to this section, unless otherwise exempt. The section authorizes the Commission or office to require each applicant for a brokerage business license to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. A license application is deemed received for purposes of s. 120.60, F.S., upon receipt of a completed application form as prescribed by the Commission by rule, a nonrefundable \$425 application fee (current fee), and any other fee prescribed by rule or law.

The section clarifies that the Commission is authorized to prescribe by rule that fingerprints submitted in paper form are required to be taken by an authorized law enforcement agency. Presently, the section does not specifically authorize the Commission to prescribe by rule the fingerprint submission process. The bill authorizes the Commission to prescribe by rule additional fees for processing fingerprints, rules for submitting fingerprints and fees by electronic means, to prescribe an additional fee of no more than \$30 for such processing. Currently, mortgage brokers and mortgage lenders are required to pay a \$23 fee to the office for fingerprint checks conducted by the Florida Department of Law Enforcement. The provision allowing the Commission to charge additional processing fees for fingerprints is clarifying in nature; as such fees are currently authorized pursuant to s. 215.405, F.S.

The section provides that a license for a mortgage brokerage business is not transferable or assignable. The section deletes a provision requiring the cancellation of a mortgage broker or lender license due to presenting a dishonored check for the payment of such license and deletes the reinstatement procedure for a cancellation for that reason. (See Section 11 of the bill that provides that the submission of a dishonored check for the payment of a license constitutes grounds for disciplinary action rather than mandatory cancellation.) The bill clarifies that an "applicant" may be denied licensure if the applicant has committed any violation specified in ss. 494.001-494.0077<sup>4</sup>, F.S., or has pending against him or her in any jurisdiction, any criminal prosecution or administrative enforcement action involving fraud or dishonest dealing.

**Section 7** amends s. 494.0033, F.S., to require licensure for a person who acts as an associate for a mortgage lender or correspondent mortgage lender. Currently, the section requires the licensure of each person that acts as a mortgage broker for a mortgage brokerage school. The purpose of the licensure requirement is to clarify that a mortgage broker can work for either a mortgage broker business or a mortgage lender or a correspondent mortgage lender and tracks the requirements of s. 494.00331, F.S. The licensure requirements are amended to allow a written or electronic test adopted and administered by the office, or an electronic test adopted by the office and administered by a third party approved by the office. Currently, the office administers a written test at no charge. The Commission may waive by rule the exam requirement for any individual who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers primary and subordinate mortgage financing transactions. The Commission is authorized to prescribe by rule a fee for the examination, not to exceed \$100. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by Commission rule, a current, non-refundable \$200 application fee, and any other fee required by law or rule.

The procedures for the submission of fingerprint cards in paper form are revised to provide that only an authorized law enforcement agency is allowed to take such fingerprints. Currently, mortgage brokers and mortgage lenders are required to pay a \$23 fee to the office for fingerprint checks conducted by the Florida Department of Law Enforcement. The Commission is authorized to prescribe by rule the submission and processing of fingerprints electronically, to prescribe an additional fee for fingerprint processing not to exceed \$30, and to contract with another state agency for fingerprint services.

The section deletes a provision requiring the cancellation of a license due to presenting a check that is dishonored and deletes the reinstatement procedure for a cancellation for that reason. Section 11 in the bill provides that the presentment of a dishonored check constitutes grounds for disciplinary action.

**Section 8** amends s. 494.0034, F.S., to delete the requirement that an application must be submitted for the renewal of a mortgage broker's license, subject to rules prescribed by the commission.

**Section 9** amends s. 494.0036, F.S., to require the office to issue a mortgage brokerage business branch office license to an applicant after the office determines the applicant has submitted a complete application (rather than upon receipt) and paid the license fee. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, the currently required non-refundable \$225 application fee, and any other fee required by law.

**Section 10** amends s. 494.004, F.S., to correct a cross reference.

**Section 11** amends s. 494.0041, F.S., to state that when payment by check or electronic transmission to the office for a license or permit is dishonored by the applicant's or licensee's financial institution, it is a ground for which disciplinary action may be taken. Currently, the office is required to cancel a mortgage broker or lender license due to the presentation of a dishonored check for the payment of such license.

**Section 12** amends s. 494.006, F.S., relating to exemptions for mortgage lenders and correspondent mortgage lenders from the requirements of ss. 494.006-494.0077, F.S. The section clarifies that banks and bank holding companies regulated under the laws of any state or the federal government of the United States are exempt from regulation. Banks, bank holding companies, and their subsidiaries that are not regulated by the U.S. federal agency will no longer qualify for exemptions. A person employed by a correspondent mortgage lender licensed under ss. 494.001-494.0077, F.S., is exempt from the licensure requirements of those sections when acting within the scope of employment with the licensee. Currently, the provision only exempts a person employed by a mortgage lender.

**Section 13** amends s. 494.0061, F.S., to clarify that person who acts as a mortgage lender must be licensed pursuant to the section, unless otherwise exempt. The section clarifies that an application for a license must include audited financial statements that are prepared in accordance with accounting principles generally accepted in the United States. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, the currently required non-refundable \$575 application fee, and any other fee required by law. The bill deletes duplicative language in new subsection (4) that permits requiring applicants to provide any reasonably necessary information in making a license determination.

The bill provides an exemption from 24 hours of classroom instruction for a principal representative if the principal representative has continuously served in the capacity of a principle representative for a licensed entity under this chapter for a period of at least one year and has not had lapse in designation as a principal representative of more than two years prior to the date of the submission of the application or amendment in the case of a change in the principal representative.

Requirements for fingerprint submissions in paper form are revised. The bill authorizes the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing. Currently, mortgage brokers and mortgage lenders are required to pay a \$23 fee to the office for fingerprint checks conducted by the Florida Department of Law Enforcement. The language that states the Commission may charge additional processing fees for fingerprints is clarifying in nature, as such fees are currently charged pursuant to s. 215.405, F.S. The section deletes a provision that requires the cancellation of a license due to presenting a check that is dishonored. (See Section 10 of the bill that provides that the presentment of a dishonored check for payment for a license is grounds for disciplinary actions).

The Commission may waive by rule the exam requirement for any individual who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers primary and subordinate mortgage financing transactions. The commission is authorized to prescribe by rule a fee of no more than \$100 for the examination. The section requires a lender to notify and document to the office that any new principal representative of a lender has completed their educational and testing requirements within 90 days of their designation.

**Section 14** amends s. 494.0062, F.S., to clarify that each person who acts as a correspondent mortgage lender must be licensed pursuant to the section, unless otherwise exempt from licensure. The office is authorized to require each applicant for a correspondent mortgage lender's license to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The bill clarifies that audited financial statements must be prepared in accordance with accounting principles that are generally accepted in the United States. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by Commission rule, the currently existing non-refundable \$500 application fee, and any other fee required by law. The section deletes duplicative language in new subsection (4) that permits requiring applicants to provide any reasonably necessary information in making a license determination.

The bill provides an exemption from 24 hours of classroom instruction for a principal representative if the principal representative has continuously served in the capacity of a principle representative for a licensed entity under this chapter for a period of at least one year and has not had lapse in designation as a principal representative of more than two years prior to the date of the submission of the application or amendment in the case of a change in the principal representative.

The bill provides that fingerprint submission requirements will be prescribed by rule. Requirements are revised for fingerprint submissions, and authority is given for the Commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing. Currently, mortgage brokers and mortgage lenders are required to pay a \$23 fee to the office for fingerprint checks conducted by the Florida Department of Law Enforcement. The language that states the Commission may charge additional processing fees for fingerprints is clarifying in nature, as such fees are currently charged pursuant to s. 215.405, F.S. The section deletes a provision calling for the cancellation of a license due to presenting a check that fails to clear. (See Section 10 regarding checks failing to clear.)

The Commission may waive by rule the exam requirement for any individual who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers primary and subordinate mortgage financing transactions. The Commission is authorized to prescribe by rule a fee of no more than \$100 for the examination. The section requires a lender to notify and document to the office any change in designation of its principal representative within 30 days and that any new principal representative of a lender has completed their educational and testing requirements within 90 days of their designation.

**Section 15** amends s. 494.0064, F.S., by deleting the inclusion of a licensee's associates in the professional education requirements for license renewal. The term "associates" is deleted from the educational requirements because associates are licensed mortgage lenders and must comply with the continuing education requirements of mortgage lenders. Thus, the reference to associates in current law is redundant.

**Section 16** amends s. 494.0065, F.S., to clarify that a mortgage lender licensee must demonstrate net worth in accordance with financial reports that are prepared in accordance with accounting principles generally accepted in the United States. The current law permits persons who are registered pursuant to former s. 494.039, F.S., licensed pursuant to former s. 521.205, F.S., or who acted solely as mortgage servicers on September 30, 1991, to apply for a mortgage lender's license, if certain criteria

are met. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by Commission rule, the non-refundable \$575 application fee, and any other fee required by law. The current non-refundable fee is \$500. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to toll.

As of October 1, 2005, new requirements are mandated when the ultimate equitable owner of a mortgage lender applies for a one-time transfer of at least 50 percent of the ownership, control, or power to vote any class of equity securities of the mortgage lender. The requirements are to provide proof that the applicant's principal representative has completed 24 hours of instruction in primary and subordinate financing transactions and in the provisions of Chapter 494, F.S., and that the principal representative must pass a written test that covers primary and subordinate mortgage financing transactions and the provisions of Chapter 494, F.S. The office or a third party approved by the office must administer the test.

The Commission may, by rule, set a fee for the exam not to exceed \$100. The Commission may waive, by rule, the exam requirement for any individual who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers primary and subordinate mortgage financing transactions. The Commission is authorized to prescribe, by rule, a fee for the examination. The non-refundable application fee is increased from \$500 to \$575. Audited financial statements submitted as part of the application must be prepared in accordance with accounting principles that are generally accepted in the United States.

Requirements are revised for fingerprint submissions, and authority is given for the Commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee not to exceed \$30 for fingerprint processing, and to contract with another state agency for fingerprint services. Currently, mortgage brokers and mortgage lenders are required to pay a \$23 fee to the office for fingerprint checks conducted by the Florida Department of Law Enforcement pursuant to s. 215.405, F.S., which authorizes fees for fingerprint processing.

The bill mandates that each mortgage lender must designate a principal representative who exercises control over the business and maintains a form prescribed by the Commission by rule that designates the principal representative. Failure to maintain the form will result in the business being deemed to be operated by each officer, director, or equitable owner of a ten percent or greater interest in the business. The bill requires a correspondent lender to notify the office of any change in the designation of a principal representative within 30 days and to notify and prove to the office that any new principal representative of a lender has completed their educational and testing requirements within 90 days of their designation.

**Section 17** amends s. 494.0066, F.S., to require the office to issue a branch office license to a licensee licensed under s. 494.0065(1), F.S., or a transfer license upon determining the licensee has submitted (rather than upon receipt) a completed application form and the nonrefundable license fee.

**Section 18** amends s. 494.0067, F.S., to clarify that the educational requirements for the principal representative and all loan originators or associates who perform services for the licensee are for continuing education.

**Section 19** amends s. 494.0072, F.S., to state that when payment by check or electronic transmission to the office for a license or permit is dishonored by the applicant's or licensee's financial institution, it is a violation of this chapter and disciplinary action may be taken. Currently, a dishonored check would result in the cancellation of a license.

**Section 20** amends s. 494.00721, F.S., relating to the reauthorization of a mortgage lender or correspondent mortgage lender after remedying a failure to satisfy the net worth requirements of ss. 494.0061, 494.0062, and 494.0065, F.S., to provide a technical conforming change.

## **Section 21 Mortgage Lender's Payment of Insurance Premiums from Escrow Funds**

**Section 21** amends s. 501.137, F.S., to hold the lender liable for attorney fees and costs incurred by a property owner for bringing an action against the lender if the lender fails to pay taxes or insurance premiums from an escrow account and refuses to pay the consumer the difference in cost between a lapsed insurance policy and a new one. Presently, if a mortgage lender fails to timely pay an insurance premium, and the payment is not more than 90 days overdue, the insurer must reinstate the insurance policy retroactive to the date of cancellation under the provisions of s. 501.137, F.S. The lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy. If the premium payment is more than 90 days overdue, or if the insurer refuses to reinstate the policy, the lender must pay the difference between the cost of the previous insurance policy and a new, comparable policy for two years. Currently, there is no provision for the payment of attorney's fees and costs by the lender.

## **Sections 22-24 the Florida Consumer Finance Act**

**Section 22** amends s. 516.03, F.S. to state that an application for a license to make loans under Chapter 516, F.S., is deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, a non-refundable \$625 application fee (current fee), and any other fee required by law. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to toll and that the application fee is nonrefundable. The commission may require, rather than allow, electronic submission of any form, document, or fee required by Chapter 516, F.S. The commission is authorized to prescribe by rule requirements and procedures for obtaining a technological for financial hardship exemption from such rules.

**Section 23** amends s. 516.031, F.S., authorizing an increase in the fee for a credit check of a loan applicant from \$10 to \$25.

**Section 24** amends s. 516.05, F.S., relating to licensing, to provide that if any license under this chapter, other than an application for a renewal is denied, then, the license fee is non-refundable and the investigation fee is refundable. Currently, the license fee must be returned and the investigation fee is retained.

**Section 25** amends s. 516.07(1), F.S., to state that when payment by check or electronic transmission to the office for a license or permit is dishonored by the applicant's or licensee's financial institution, it is a violation of this chapter and constitutes grounds for disciplinary action.

**Section 26** amends s. 516.12, F.S., to authorize the commission to prescribe by rule the minimum records to be maintained in the books, accounts, records, and documents of licensees for purposes of enabling the office to determine the licensee's compliance with Chapter 516, F.S. The commission may also adopt rules governing the destruction of books, accounts, records, and documents retained by the licensee after completion of the minimum two year retention period specified in subsection (1). Notwithstanding the two year retention period, if the office identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of Chapter 516, F.S., the Commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

## **Sections 27-31: The Florida Securities and Investor Protection Act**

**Section 27** amends s. 517.051, F.S., to clarify that financial statements are required to be prepared in accordance with United States generally accepted accounting principals. Currently, the section does not specify United States.

**Section 28** amends s. 517.061, F.S., to delete the requirement that a securities dealer located in Canada conducting business with a Canadian citizen located in Florida must be registered pursuant to s. 517.12(17), F.S. Instead, if a dealer located in Canada complies with s. 517.12(17), F.S., the dealer is exempt from the requirement of registering securities found in s. 517.07, F.S. This eliminates the need for Canadian dealers to be registered, and instead mandates compliance with the procedures detailed in s. 517.12(17), F.S.

**Section 29** amends 517.081, F.S., to clarify that financial statements are required to be prepared in accordance with United States generally accepted accounting principals. Currently, the section does not specify United States.

**Section 30** amends s. 517.12, F.S., which contains the requirements for information to be included in an application to be a registered dealer, associated person, investment advisor, or branch office. Requirements are revised for fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing. Currently, securities dealers and agents are subject to a \$47 fee for a state and federal fingerprint check. This fee is authorized pursuant to s. 215.405, F.S., and is prescribed by rules adopted by the Florida Department of Law Enforcement. The section eliminates the requirement that associated persons be assessed an additional fee if they do not meet fingerprint filing requirements, instead making the assessment optional.

The bill states that the registration of each dealer, investment adviser, and associated person expires on December 31 of the year registration became effective unless registration is renewed before that date. The registration of branch offices expires on March 31, but once the National Association of Securities Dealers develops the capacity to process branch office registration through the Central Registration Depository, the expiration date is December 31 of the year of registry unless a renewal occurs before December 31. The commission is authorized to establish by rule the initial year in which branch renewals must be processed through the Central Registration Depository of the National Association of Securities Dealers. The commission is authorized to prescribe by rule procedures for renewing branch registrations through the Central Registration Depository.

A Canadian securities dealer that is conducting business with a Canadian citizen located in Florida, related to Canadian securities must meet a notice filing requirement with the office. The current registration requirement for Canadian securities dealers dealing with Canadian citizens in Florida is eliminated. The notice filing consists of necessary documents required by rule by the Financial Services Commission, consent to service of process, and the current \$200 filing fee. Canadian agents of the Canadian dealers would no longer be subject to the registration requirements and the \$30 annual fee.

**Section 31** amends s. 517.131, F.S., regarding the requirements for seeking recovery from the Securities Guaranty Fund. The office is authorized to require an affidavit from the claimant that details the reasonable searches and inquiries made into determining whether the judgment debtor possesses assets that can be used to satisfy all or part of the judgment. The person claiming payment from the fund may also request the distribution of funds from the Securities Guaranty Fund, if the office has waived compliance with paragraphs (a) or (b) of s. 517.131(3), F.S. Section 517.131(5), F.S., is created to authorize the commission to prescribe by rule the procedures for complying with subsections (2), (3), and (4) of s. 517.131, F.S. (requiring that a court judgment meeting certain criteria is necessary to recover from the fund, requiring that a reasonable search to secure compensation from other sources be made, and requiring written notice be given the office of a claim as soon as possible),

including rules for the form of submission and guidelines on the sufficiency and content of submissions of claims and notices.

**Section 32** amends s. 517.141, F.S., to provide that the \$100,000 limitation on payment from the Securities Guaranty Fund applies against any one dealer, investment adviser, or associated person regardless of the number of claims or claimants involved (rather than number of claimants only). The section requires a claimant who satisfies a judgment described in s. 517.131(3)(a), F.S., to reimburse the fund all amounts paid to the claimant on the claim. The section also creates subsection (11), which gives the Commission rulemaking authority to specify the procedures for complying with this section, including rules for the form of submission and guidelines on the sufficiency and content of submissions of claims and notices.

**Section 33** amends s. 517.161, F.S., to allow registration under s. 517.12, F.S., to be denied, revoked, restricted, or suspended if payment to the office for a license or permit fails to clear.

### **Section 34-37: Motor Vehicle Retail Sales Finance Act, Retail Installment Sales Act, Installment Sales Finance Act, and Home Improvement Sales and Finance Act**

**Sections 34-37** amends ss. 520.03, 520.32, 520.52, and 520.63 F.S., to provide that an application for a license to engage in the business of a motor vehicle retail installment seller, retail installment transactions, sales finance company, a home improvement finance seller, or operate a branch of such business is deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by Commission rule, the currently existing non-refundable \$175 application fee, and any other fee required by law. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to toll.

**Section 38** amends s. 520.994, F.S., to authorize the Commission to adopt rules to require electronic submission of forms required by the chapter for the regulation of sales and finance in accordance with Chapter 520, F.S. The rules must reasonably accommodate technological or financial hardship resulting from compliance. The Commission is authorized to prescribe by rule the procedures for obtaining a technological or financial hardship exemption from the electronic submittal requirements.

**Section 39** amends s. 520.995, F.S., to state that when payment is dishonored by the applicant's or licensee's financial institution by check or electronic transfer to the office for a license or permit, this action constitutes grounds for disciplinary action.

**Section 40** amends s. 520.997(4), F.S., to give the Commission rulemaking authority to prescribe the minimum information to be maintained to ensure compliance with Chapter 520, F.S. The Commission may also adopt rules governing the destruction of books, accounts, records, and documents retained by the licensee after completion of the minimum two year retention period specified in subsection (3). Notwithstanding the two year retention period, if the office identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of Chapter 520, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The Commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

### **Section 41: The Florida Title Loan Act**

**Section 41** amends s. 537.009, F.S., to give the Commission rulemaking authority to prescribe the minimum information to be maintained to ensure compliance with Chapter 537, F.S. The Commission may also adopt rules governing the destruction of books, accounts, records, and documents retained

by the licensee after completion of the minimum two year retention period specified in subsection (3). Notwithstanding the two year retention period, if the office identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of Chapter 537, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

### **Sections 42-54: The Money Transmitters' Code**

**Section 42** amends s. 560.105, F.S., to give the Commission authority to adopt rules to require electronic submission of forms required by the chapter for the regulation of the money transmitter industry in accordance with Chapter 560, F.S. The rules must reasonably accommodate technological or financial hardship resulting from compliance. The Commission may prescribe by rule the procedures for obtaining a technological or financial hardship exemption from the electronic submittal requirements.

**Section 43** amends s. 560.114, F.S., to provide that a payment by check or electronic transfer to the office for a license or permit that fails to clear by a financial institution is a violation of Chapter 560, F.S., and constitutes grounds for disciplinary action.

**Section 44** amends s. 560.118, F.S., to give the Commission authority to adopt rules to require electronic submission of forms required in the submission of quarterly financial reports to the office. The rules must reasonably accommodate technological or financial hardship resulting from compliance. The Commission may prescribe by rule the procedures for obtaining a technological or financial hardship exemption from the electronic submittal requirements.

**Section 45** amends s. 560.121, F.S., to authorize the Commission to prescribe by rule the minimum information to be maintained in the books, accounts, records, and documents of licensees for determining compliance with ss. 560.101-560.408, F.S. The Commission is authorized to adopt rules governing the destruction of books, accounts, records, and documents retained by the licensee after completion of the minimum three year retention period specified in subsection (2). Notwithstanding the three year retention period, if the office identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of Chapter 560, F.S., the Commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

**Section 46** amends s. 560.126, F.S., to require registrants to notify the office within 30 days of any changes in any information submitted on the registrant's applicant or amendment.

**Section 47** amends s. 560.205, F.S., which prescribes the eligibility requirements for a person registered to sell or issue payment instruments or act as a funds transmitter. Subsection (1) is amended to clarify that the exemptions from the fingerprint filing requirements only apply to publicly traded corporations "as defined by the commission by rule," and that subsidiaries or bank holding companies must be organized and regulated under the laws of any state or the United States in order to be exempt.

Requirements are revised for fingerprint submissions, and authority is given for the Commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing. Presently, money transmitters are

subject to a \$47 fee to cover the costs of a state federal background check provided by the Department of Law Enforcement. This fee is authorized pursuant to s. 215.405, F.S., and is prescribed by rules adopted by the Florida Department of Law Enforcement.

Subsection (2) is amended to give the commission rulemaking authority to establish procedures for depositing fees and filing documents related to an application for registration by electronic means. The application must contain all information the Commission requires by rule. The requirements that the application is on a form and that information required is reasonable are deleted. Language is deleted that requires a list identifying the applicant's proposed vendors in this state, and the locations in this state at which the applicant and its authorized vendors propose to conduct business. Subsection (3) is amended to require that an application from a corporation must contain all information the commission requires by rule. The requirement that the information required be reasonable is deleted. Subsection (4) is amended to require that an application from an applicant that is not a corporation must contain all information the Commission requires by rule. The requirement that the information required be reasonable is deleted. Subsection (6) is created and requires the reporting of changes in registration—via written amendment—caused by changes in personnel of a partnership or in the principals, members, partners, officers, directors, controlling shareholders, or responsible persons of a money transmitter or by changes of any material fact or method of doing business.

**Section 48** amends s. 560.207, F.S., to authorize the Commission to prescribe by rule procedures for depositing fees and filing documents by electronic means for renewing registrations under this section. The bill provides that registration expires on April 30 of the year in which the existing registration expires and clarifies that the renewal fee is nonrefundable. The bill provides for reinstatement of registration for a \$500 late fee that must be filed within 60 calendar days after the expiration of the existing registration.

**Section 49** amends s. 560.210, F.S., to clarify that the permissible investments mandated by the section must be calculated in accordance with accounting principles generally accepted in the United States. The investments would be required to have an aggregate market value of not less than the aggregate face amount of all “outstanding funds transmissions and payment instruments” issued or sold by the registrant or an authorized vendor in the U.S. Currently, the minimum aggregate market value may not be less than the aggregate face amount of “all funds transmitted and outstanding payment instruments.”

**Section 50** amends s. 560.211, F.S., to allow a registrant who sells or issues fund transfers or acts as a funds transmitter to notify the office via amendment the location of records required to be maintained by this section.

**Section 51** amends s. 560.305, F.S., to give the Commission rulemaking authority to establish rules and procedures for depositing fees and filing documents related to an application for registration by electronic means. The Commission is also given rulemaking authority to request information in addition to statutory requirements for contents of an application under this section.

**Section 52** amends s. 560.306, F.S., to clarify that the exemptions from the fingerprint filing requirements only apply to publicly traded corporations “as defined by the Commission by rule,” and that subsidiaries or bank holding companies must be organized and regulated under the laws of any state or the United States in order to be exempt. Requirements are provided for fingerprint submissions, and authority is given for the Commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee for fingerprint processing, and to contract with another state agency for fingerprint services. Presently, money transmitters are subject to a \$47 fee to cover the costs of a state federal background check provided by the Department of Law Enforcement. This fee is authorized pursuant to s. 215.405, F.S., and is prescribed by rules adopted by the Florida Department of Law Enforcement. Therefore, the language that states the Commission may charge an additional processing fee of no more than \$30 for fingerprints is clarifying in nature, as such fees are currently charged pursuant to s. 215.405, F.S.

The section, which requires a registration or renewal application to specify the applicant's proposed principal place of business and other business locations, is amended to delete the provision that a registrant may satisfy this requirement by providing the office with a list of such locations, including all authorized vendors operating in this state, not less than annually. The section requires the reporting of changes in registration via written amendment triggered by changes in personnel of a partnership or in the principals, members, partners, officers, directors, controlling shareholders, or responsible persons of a money transmitter or by changes of any material fact or method of doing business.

**Section 53** amends s. 560.308, F.S., to provide for a 24 month renewal of a registration by furnishing information the Commission may require by rule, together with fees required. The bill gives the Commission rulemaking authority to establish procedures for depositing fees and filing documents by electronic means for renewing registrations and to require that the current, nonrefundable fee of \$500 must accompany each renewal of registration. Currently, the section requires the office to renew registration upon the receipt of a completed renewal form and payment of the nonrefundable fee. The registration expires on December 31 on the year in which the existing registration expires, unless the registration has been renewed by that date. The office will reinstate a registration for which the application is filed within 60 calendar days and the reinstatement is effective upon receipt of required fees and any other information the Commission requires by rule.

**Section 54** amends s. 560.310, F.S., to require that a registrant to notify the office via amendment, as prescribed by the Commission by rule, of the location of required records.

**Section 55** amends s. 560.403, relating to requirements for registration reinstatement, to require the office to grant a reinstatement if an application is filed within 60 calendar days after the expiration of the existing registration. The reinstatement is effective upon receipt of the required fees and any information that the Commission requires by rule.

**Section 56** amends s. 655.935, F.S., providing that the spouse, parent, adult decedent, or a person named as a personal representative in a copy of a purported will may open and examine the contents of a safe-deposit box co-leased by a decedent in the presence of the lessor. The bill provides that access granted pursuant to this section shall not be considered the initial opening of the safe-deposit box pursuant to s. 733.6065 by a personal representative appointed by a court in this state.

**Section 57** amends s. 655.936, F.S., to require that the contents placed in a safe-deposit box by the decedent be delivered by the lessor to a personal representative of the decedent, who is appointed by a court in this state.

**Section 58** amends s. 655.937, F.S., to provide that when a safe-deposit box is leased in two or more names, unless specifically provided in the lease or rental agreement to the contrary, access to that box will be granted to any one or more persons acting as personal representatives, by any persons acting as fiduciaries as authorized in writing, by any agent authorized by writing, spouse, parent, adult decedent, or personal representative.

The bill provides that in all cases described in the above paragraph, the signature is a valid and sufficient release and discharge to the lessor for granting access to the box.

The bill provides that the right of access by a co-lessee is separate from the rights and responsibilities of other persons who may be granted access to a safe-deposit box after the death or incapacity of another co-lessee.

The bill provides that after the death of a co-lessee, any person who is granted access to the safe-deposit box may make a written inventory of the box which will be conducted by the person making the request and one other person specified. Each person is to verify the box contents and sign a copy of the inventory. If the person making the written inventory is the surviving co-lessee, the other person

present may be any other person granted access pursuant to law, an employee of the institution where the box is located, or a licensed attorney of this state. If the person making the written inventory is not a surviving co-lessee, the other person present may be a surviving co-lessee, an employee of the institution where the box is located, or a licensed attorney of this state.

**Section 59** amends s. 733.6065, F.S., providing that the initial opening of a safe deposit box includes any box leased or co-leased by the decedent.

**Section 60** amends s. 817.801, F.S., providing a definition of “creditor contribution”.

**Section 61** amends s. 817.802, F.S., revising the amount of fees that a debt manager or credit counselor may charge to certain debtors.

**Section 62** amends s. 817.804, F.S., revising and audit requirement for all accounts of such person in which the funds of debtor are deposited.

**Section 63** amends s. 817.805, F.S. providing that creditor contributions are exempt from disbursement requirements.

**Section 64** provides appropriations for third party administration of the mortgage broker test.

**Section 65** provides appropriations for fingerprint processing of applicants.

**Section 66** provides an effective date of October 1, 2005.

#### C. SECTION DIRECTORY:

Section 1: Amends s. 494.0011, F.S., providing the ability for the Commission of Financial Services to mandate electronic filings including quarterly reports, initial applications, and renewal applications; Allowing alternate means for hardships; provides that the granting of a license must be pursuant to s. 120.60, F.S.

Section 2: Amends s. 494.0016, F.S., prescribing rules for the destruction of records; provides the Office with authority to provide for a longer retention time if a relevant criminal or civil statute of limitations warrants a longer retention period.

Section 3: Amends s. 494.0029, F.S., establishing provisions for received applications and permits.

Section 4: Amends s. 494.00295, F.S., providing clarification relating to continuing education programs.

Section 5: Amends s. 494.003, F.S., providing exemptions from mortgage brokering provisions for certain institutions.

Section 6: Amends s. 494.0031, F.S., relating to licensure as a mortgage brokerage business.

Section 7: Amends s. 494.0033, F.S., relating to mortgage brokerage licensing tests.

Section 8: Amends s. 494.0034, F.S., relating to renewal of a mortgage broker’s license.

Section 9: Amends s. 494.0036, F.S., relating to mortgage brokerage business branch offices.

Section 10: Amends s. 494.004, F.S., relating to requirements of licensees.

Section 11: Amends s. 494.0041, F.S., relating to administrative penalties and fines for licenses and permits.

- Section 12: Amends s. 494.006, F.S., providing exemptions relating to mortgage lenders.
- Section 13: Amends s. 494.0061, F.S., providing licensing, fingerprinting, and testing requirements for mortgage lenders.
- Section 14: Amends s. 494.0062, F.S., relating to license requirements for correspondent mortgage lenders.
- Section 15: Amends s. 494.0064, F.S., relating to continuing education requirements.
- Section 16: Amends s. 494.0065 F.S., relating to transfer applications.
- Section 17: Amends s. 494.0066, F.S., relating to mortgage brokerage branch office licensing.
- Section 18: Amends s. 494.0067, F.S., relating to continuing education requirements for licensees.
- Section 19: Amends s. 494.0072, F.S., relating to disciplinary action for transmission of funds which fail to clear.
- Section 20: Amends s. 494.00721, F.S., relating to mortgage lender net worth.
- Section 21: Amends s. 501.137, F.S., relating to mortgage lender's payment of insurance premiums from escrow funds.
- Section 22: Amends s. 516.03, F.S., relating to consumer finance loan applications.
- Section 23: Amends s. 516.031, F.S., increasing the fee for a credit check for a loan applicant.
- Section 24: Amends s. 516.05, F.S., relating to consumer finance loan licensing, removing a requirement for the Office to return fees under certain circumstances.
- Section 25: Amends s. 516.07, F.S., providing violations for consumer finance loan permit funds failing to clear the applicant's financial institution.
- Section 26: Amends s. 516.12, F.S., relating to the mandated destruction of accounts and records by consumer finance loaners.
- Section 27: Amends s. 517.051, F.S., relating to accounting principles for securities transactions.
- Section 28: Amends s. 517.061, F.S., relating to exempt securities transactions.
- Section 29: Amends s. 517.081, F.S., relating to accounting principles within registration procedure for securities transactions.
- Section 30: Amends s. 517.12, F.S., relating to fingerprinting provisions and renewing branch office registrations.
- Section 31: Amends s. 517.131, F.S., relating to submissions, notices, and claims from the Securities Guaranty Fund.
- Section 32: Amends s. 517.141, F.S., relating to payment from the Securities Guaranty Fund; providing the Commission with rule making authority for compliance.
- Section 33: Amends s. 517.161, F.S., relating to suspension of registration for a securities transactions dealer.

- Section 34: Amends s. 520.03, F.S., relating to applications for motor vehicle retailer licenses.
- Section 35: Amends s. 520.32, F.S., relating to applications for retail installment sales licenses.
- Section 36: Amends s. 520.52, F.S., relating to applications for installment sales finance licenses.
- Section 37: Amends s. 520.63, F.S., relating to installment sales finance licensees.
- Section 38: Amends s. 520.994, F.S., providing exemptions for financial hardship for applications for retail installment sales.
- Section 39: Amends s. 520.995, F.S., relating to disciplinary action for funds that fail to clear an applicants financial institution.
- Section 40: Amends s. 520.997, F.S., relating to destruction of books, accounts, and records retained by a retail installment sales licensee.
- Section 41: Amends s. 537.009, F.S., relating to destruction of books, accounts, and records retained by title loan companies.
- Section 42: Amends s. 560.105, F.S., relating to electronic forms for money transmitters.
- Section 43: Amends s. 560.114, F.S., relating to disciplinary actions for money transmitters whose application fee fails to clear the financial institution.
- Section 44: Amends s. 560.118, F.S., relating to electronic forms for money transmitters.
- Section 45: Amends s. 560.121, F.S., relating to destruction of books, accounts, and records retained by title money transmitters.
- Section 46: Amends s. 560.126, F.S., relating to significant events and notice required for money transmitters.
- Section 47: Amends s. 560.205, F.S., relating to fingerprinting for money transmitters.
- Section 48: Amends s. 560.207, F.S., relating to renewal of registration for money transmitters.
- Section 49: Amends s. 560.210, F.S., relating to permissible investments.
- Section 50: Amends s. 560.211, F.S., relating to money transmitters' records.
- Section 51: Amends s. 560.305, F.S., relating to electronic filing for check cashers.
- Section 52: Amends s. 560.306, F.S., relating to fingerprinting for check cashers.
- Section 53: Amends s.560.308, F.S., relating to registration renewal for check cashers.
- Section 54: Amends s. 560.310, F.S., relating to providing rule making for Commission for records of check cashers.
- Section 55: Amends s. 560.403, F.S., relating to reinstatement of application for deferred presentment providers.
- Section 56: Amends s. 655.935, F.S., relating to the initial opening of a safe-deposit box.



<b>Total – RTF</b>	\$1,475,969	\$1,967,784	\$1,967,784
GR- fingerprint processing	\$ 12,015	\$ 16,020	\$ 16,020
<b>Total – General Revenue</b>	\$ 12,015	\$ 16,020	\$ 16,020

Non-Recurring                      None

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

Mortgage Broker Testing (cost to applicants if transferred to a third party vendor for administration):

	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
	\$ 717,154	\$ 956,205	\$ 956,205

According to the Office, they are unable to predict offsetting benefit to private sector of allowing quicker entry into business due to more frequent testing, immediate scoring of test and more opportunities to take the test. It is also anticipated more test sites would be available than currently, reducing the applicants' travel expense to take the test.

<u>Fingerprint Analysis</u>	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>
Mortgage Brokers & Lenders	\$ 413,122	\$ 550,830	\$ 550,830
Securities Agents	\$ 12,015	\$ 16,020	\$ 16,020
Money Transmitters	\$ 14,670	\$ 19,560	\$ 19,560

The proposed language allows the Office to establish a rule to charge a fee not to exceed \$30 to recover the cost of electronic processing of fingerprints. The fee will be established sufficient to cover the cost of a vendor to provide this service. In 2003-04, the Office processed a total of 19,547 fingerprint records. At the maximum amount of \$30, this would represent a cost to applicants of \$586,410 (reduced to \$439,807 for the first year based on an October 1 effective date). It is anticipated the cost initially will be less than the \$30 maximum provided.

Currently, finance applicants (i.e., mortgage broker, correspondent lender, mortgage broker businesses, and mortgage lenders) submit a fingerprint card which is only submitted to FDLE for a criminal history check. The applicant must pay \$23 to cover this. It is proposed that the scanned fingerprints will also be sent to FBI, incurring an additional \$24 per record. 18,361 x \$24 = \$440,664 (\$330,498 for October 1 effective date)

FBI processing for Finance applicants	\$330,498	\$440,664	\$440,664
---------------------------------------	-----------	-----------	-----------

Registration of Investment Advisers

The bill will require all state-registered investment advisers to register via the Investment Adviser Registration Depository (IARD), a nationwide electronic filing system operated by the National Association of Securities Dealers (NASD). The fee to register with the IARD is paid to NASD and will

require the payment of one-time fee of **\$150** initially and a **\$100** annual fee thereafter. Investment advisers currently pay a **\$200** annual registration fee to the office and will continue to pay this fee in addition to the IARD fees. Florida currently has 1,041 state-registered investment advisers, of which 549 have already converted their information to IARD and paid the initial fee. The remaining 492 will be required to pay the initial one-time fee (totaling **\$73,800**) and pay **\$100** fee annually (totaling **\$49,200**). The office receives approximately 214 new applications for investment advisers annually, which represents an additional cost to the industry of **\$32,100** for the one-time fee and **\$21,400** on an annual basis for the registration fee. Filing the information with IARD allows the Office to share registration information with other states and federal authorities, and allows faster processing of applications and “one stop” filing for the industry.

#### Canadian Dealers and Agents

The fees will remain unchanged for Canadian dealers, although the registration process will change. However, the Canadian agents currently register with the State, but will no longer be required to register. Currently there are 1,568 Canadian agents registered. This will represent a savings to them of \$30 each, or \$47,040, with a resulting loss to the State General Revenue Fund.

#### Increase in Maximum Fee Permitted to Be Charged by Lender

Language is being proposed to allow an increase in the fee that a lender may charge the customer as an investigative fee for a consumer finance loan from the current \$10 to \$25 (ss. 516.03(3), FS). Potential volume of customers affected is not known.

#### D. FISCAL COMMENTS:

None.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

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

##### 2. Other:

None.

#### B. RULE-MAKING AUTHORITY:

The Commission is given rulemaking authority to prescribe requirements and procedures for obtaining a technological or financial hardship exception relating to electronic filing of forms; rulemaking authority to include guidelines for the destruction, as well as, retention of certain records; the authority to charge for the processing of fingerprint cards.

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

#### IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

The Economic Development, Trade and Banking Committee met on February 22, 2005, and adopted a strike-all amendment to the bill. The amendment:

- Requires finger print cards to be taken by an authorized law enforcement agency;
- Makes it a basis for disciplinary action if a check for a license or permit is dishonored by the applicant's financial institution;
- Allows for an increase in the fee for a credit check of a loan applicant from \$10 to \$25;
- Provides for an award of attorney's fees and costs if as the result of negligence a mortgage lender fails to pay any tax or insurance premium and subsequently refuses to pay the difference between a lapsed insurance policy and a new policy required by law;
- Reconciles conflicts between the 2002 amendments to the Probate Code and provisions of the Banking Code relating to safe-deposit boxes;
- Removes a provision relating to the destruction of insurance agent records, which created a single subject issue;
- Removes an unnecessary severability clause; and
- Makes various technical and grammatical corrections.

The State Administration Appropriations Committee met on April 12, 2005, and adopted two amendments to the bill.

- The first amendment provides a definition for "creditor contribution" as it relates to credit counseling services.
- The second amendment removed references to a third party providing fingerprint services and added the appropriations needed to fulfill the provisions in the bill.