

# 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.)

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Prepared By: Banking and Insurance Committee

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BILL: CS/SB 2744

INTRODUCER: Banking and Insurance Committee and Senator Atwater

SUBJECT: Financial Entities and Transactions

DATE: April 21, 2006

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	<b>Fav/CS</b>
2.	_____	_____	CJ	_____
3.	_____	_____	JU	_____
4.	_____	_____	GA	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

The Office of Financial Regulation is responsible for the regulation of financial entities, including financial institutions, consumer finance companies, mortgage brokers and lenders, money transmitters, securities dealers and agents, deferred presentment providers, and title loan companies. The bill amends statutory provisions relating to mortgage brokerage and mortgage lending (ch. 494, F.S.), mortgage lenders duties related to escrow funds (part I of ch. 501, F.S.), the Florida Consumer Finance Act (ch. 516, F.S.), the Florida Securities and Investor Protection Act (ch. 517, F.S.), the Retail Installment Sales (ch. 520, F.S.), the Florida Title Loan Act (ch. 537, F.S), the Money Transmitters' Code (ch. 560 F.S), and provisions related to safe deposit boxes (chs. 655 and 733, F.S.). 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 the 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;
- Revision of mortgage broker and lender examination procedures and authority to charge an examination fee of up to \$100 for the administration of the test by a third party vendor;
- Increase in the fee cap for a credit check of a loan applicant from \$10 to \$25 for consumer finance loans;
- Elimination of the registration fee (\$30) for Canadian agents if the Canadian Dealer is registered and the requirement of a notice filing;

- Registration and imposition of additional fees for investment advisers through the national Investment Adviser Registration Depository;
- Elimination of reporting requirements in the renewal process for registration to sell or issue payment instruments or act as a funds transmitter under part II of ch. 560, F.S.;
- A reconciliation of conflicts between the 2002 amendments to the Probate Code and provisions of the Banking Code relating to safe-deposit boxes;
- Extension of time that a financing statement filed is effective for purposes of satisfying the requirements for perfecting a security interest under the provisions of the Uniform Commercial Code; and
- An award of attorney's fees and costs if, as the result of neglect, a mortgage lender fails to pay any tax or insurance premium and subsequently refuses to pay the difference in premiums between a lapsed insurance policy and a new policy required by law.

The bill appropriates \$700,515 from the Regulatory Trust Fund for the Office of Financial Regulation for mortgage broker testing for Fiscal Year 2006-07, which will be funded by fees received from applicants. The elimination of the registration fee for Canadian agents will result in a recurring loss of \$53,250 in General Revenue.

This bill substantially amends the following sections of the Florida Statutes: 494.001, 494.0011, 494.0016, 494.0029, 494.00295, 494.003, 494.0031, 494.0032, 494.0033, 494.0036, 494.0039, 494.004, 494.0041, 494.006, 494.0061, 494.0062, 494.0064, 494.0065, 494.0066, 494.0067, 494.0072, 494.00721, 501.137, 516.01, 516.03, 516.031, 516.05, 516.07, 516.08, 516.12, 516.19, 517.021, 517.051, 517.061, 517.081, 517.12, 517.131, 517.141, 517.161, 520.02, 520.03, 520.31, 520.32, 520.52, 520.61, 520.63, 520.994, 520.995, 520.997, 520.999, 537.009, 559.9232, 560.105, 560.118, 560.114, 560.121, 560.126, 560.127, 560.205, 560.207, 560.210, 560.211, 560.305, 560.306, 560.308, 560.310, 560.403, 655.935, 635.936, 655.937, 679.705, and 733.6065, of the Florida Statutes.

## II. 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 agency 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 OFR of Financial Regulation (OFR) 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 ch. 494, F.S. Securities transactions are regulated under ch. 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 adviser and who meet the statutory requirements for compensation.

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<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> Section 20.121(3), F.S.

Chapter 516, F.S., governs 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. Section 516.031, F.S., provides, in part, that lenders may charge an amount not to exceed \$10 to reimburse a portion of the costs for investigating the character of and credit of the person applying for a loan. The OFR also has regulatory authority over the following types of retail installment sales covered by ch. 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).

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).

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 2 years. There is no provision for the recovery of attorney's fees and costs by the property owner.

Sections 655.935, 655.936, 655.937, and 733.6065, F.S., respectively, deal with procedures for opening and examining the contents of a safe-deposit box of a deceased lessee (decedent); delivery of the decedent's safe-deposit box contents or property held in safekeeping to the decedent's resident personal representative or foreign personal representative; access to safe deposit boxes leased in two or more names, including a specification of who is granted access; and the initial opening of the safe-deposit box, including a specification of who shall be present to verify the box's contents.

Chapter 679, F.S. addresses secured transaction under the Uniform Commercial Code. Section 679.705, F.S., provides that a financing statement filed prior to 2000 for the purpose of perfecting a security interest cease to be effective at the earlier of the time the statement would have ceased to be effective under the law of the jurisdiction in which it is filed or June 30, 2006.

### **III. Effect of Proposed Changes:**

#### **General Licensing Provisions Applicable to Multiple Chapters**

**Electronic Filing of Forms and Fees.** The bill grants the Financial Services Commission (commission) rulemaking authority to require electronic filing of forms, documents, and fees. However, it provides that the commission must reasonably accommodate technological or financial hardship and requirements and procedures for obtaining a technological or financial

hardship exemption. If the OFR does not require electronic filing, the OFR must maintain dual processes, one for paper filing and another for electronic filing. (chs. 494, 516, 520, and 560, F.S.)

**Receipt of Applications.** The bill clarifies that applications are not deemed received until all required fees are received and authorizes disciplinary action if fees paid with bad check (insufficient funds). (chs. 494, 516, and 520, F.S.)

**Destruction of records.** The commission is authorized to prescribe rules for the destruction of records maintained by licensees to protect sensitive consumer information from identity theft. (chs. 494, 516, 520, 527, and 560, F.S.)

**Display of License or Permit.** Licensed entities are no longer required to display their licenses or permits. License information is available via the OFR's website. (chs. 494, 516, and 520, F.S.)

**Control person and controlling interest.** The bill provides a definition of "control person" and "controlling interest." A "control person" means an individual, partnership, corporation, trust, or other organization that possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. A person is presumed to control a company if, with respect to a particular company, that person: (a) is a director, general partner, or officer exercising executive responsibility or having similar status or functions; (b) directly or indirectly has the right to vote 10 percent or more of a class of a voting security or has the power to sell or direct the sale of 10 percent or more of a class of voting securities; or (c) In the case of a partnership, has the right to receive upon dissolution, or has contributed, 10 percent or more of the capital.

A "controlling interest" is defined to mean possession of the power to direct or cause the direction of the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who directly or indirectly has the right to vote 25 percent or more of the voting securities of a company or is entitled to 25 percent or more of its profits is presumed to possess a controlling interest. (chs. 494, 516, and 520, F.S.)

**Change in control.** The bill clarifies the procedures with regard to change in control of a business. Currently, a licensee must notify the OFR of any change in the form of business, officer, or director. The bill authorizes the OFR to obtain background information from persons who have not previously undergone review by the OFR. The bill also requires any person who intends to obtain a controlling interest in a licensed entity must file a new application. The commission may prescribe by rule provisions to waive this requirement for individuals who are already licensed or have undergone review by OFR. (chs. 494, 516, 520, and 560, F.S.)

**Updating licensure information.** Licensees are required to keep the application information current by providing updates to the OFR if changes occur. (chs. 494, 516, 520, and 560, F.S.)

**Background checks.** The bill authorizes the OFR to inquire into the backgrounds of applicants, officers, directors, and other persons with the power to direct the management of the licensee. (ch. 494, 516, 520, and 560, F.S.)

**Fingerprinting.** This bill clarifies that the commission is authorized to prescribe, by rule, that fingerprint cards are required from each officer, director, control person, member, partner, or joint venturer of the applicant and each ultimate equitable owner of 10 percent or greater interest in the business. The fingerprint cards are required to be taken by an authorized law enforcement agency, not an officer. Presently, the law does not specifically authorize the commission to prescribe by rule the fingerprint submission process. The bill provides a procedure for fingerprint card processing by the OFR. It provides that fingerprint processing costs (\$47) may be borne by the OFR, the employer, or the person subject to the background check and authorizes the Florida Department of Law Enforcement to submit monthly invoices for fingerprint processing. (chs. 494, 516, 520, 560, F.S.)

**Licensing requirements.** The bill clarifies that the following entities are required to obtain license from the OFR, unless specifically exempt:

- Mortgage business schools that offer or conduct mortgage business training for the purpose of meeting professional continuing education requirements,
- Persons who act as a mortgage brokerage businesses,
- Natural person who acts as an associate for a mortgage lender or correspondent mortgage lender,
- Mortgage lender,
- Correspondent mortgage lender,
- Mortgage lender's branch offices,
- Motor vehicle retail installment seller or operator, retail installment transactions, sales finance company, home improvement finance seller, branch of such businesses, and
- Money transmitters.

### **Licensure, Registration, Fingerprinting, or Examination Fee Changes in the Bill**

**Mortgage brokerage test.** Authorizes the OFR to outsource the mortgage broker test at a cost to the applicant not to exceed \$100. Currently, the cost of the test is included in the application fee and OFR staff administers the test once a month at limited locations. The fee will be used to contract with a vendor to develop an electronic version of the test to be given at testing centers located throughout the state. It is estimated the cost of the computerized test will be \$60-75 per test based on previous bids. (Section 9)

**Consumer finance loan fee.** The bill increases the maximum investigation fee that consumer finance companies can charge their customers from \$10 to \$25. This fee has not been increased since it took effect on July 1, 1994. (Section 26)

**Securities registration fee.** The bill eliminates the registration fee (\$30) for Canadian agents if the Canadian dealer is registered. (Section 36)

**Investment Adviser Registration Depository.** State-registered investment advisers will be required to register via the Investment Adviser Registration Depository (IARD), a nationwide electronic filing system operated by the National Association of Securities Dealers (NASD). Since the IARD system came online in 2001, forty-seven (47) states have mandated electronic

filing through the system. Applicants will pay the NASD an initial system fee of \$150 and an annual fee of \$70, which is collected to operate and maintain the IARD system, in addition to the annual state application fee of \$200. Revenues to the State will be unchanged. Florida currently has 1,100 state-registered Investment Advisers. Six hundred and eighty of these advisers have already voluntarily converted their information to the IARD and paid the initial fee. Therefore, there are only 420 licensees that will need to register with the IARD. (Section 36)

**Fingerprinting.** See General Licensing Provisions Applicable to Multiple Chapters, above.

**Mortgage Brokerage and Lending Provisions, Chapters 494 and 501 F.S. (Section 1-23)**

**Disciplinary action.** The bill provides grounds for disciplinary action in the event of a final judgment in a civil action for fraud, embezzlement, misrepresentation, or deceit. The bill also provides grounds for disciplinary action in the event of any adverse finding or decision as the result of any administrative or civil action against the applicant or licensee that relates to the financial services industry.

**Continuing education.** The bill waives continuing education requirements for the first renewal cycle immediately following licensure for mortgage brokers and principal representatives. The bill clarifies that the educational requirements contained in this section for mortgage lenders, correspondent mortgage lenders, and mortgage lenders pursuant to a savings clause are for “continuing” education and must occur before the renewal of their respective licenses.

**Principal representative.** The bill allows a newly designated principal representative 90 days in which to complete classroom and testing requirements. The continuing education requirements for a principal representative are waived for the license renewal of a correspondent mortgage lender, mortgage lender, or mortgage lender pursuant to a savings clause for the biennial license period immediately following the period in which the principal representative completed the 24 hours of classroom education and passed a written test in order to qualify to be a principal representative.

**Application for waiver.** The bill provides the commission with rulemaking authority to adopt rules for the waiver of the application required by the relevant chapters if the person or group of persons proposing to purchase or acquire a controlling interest in a licensee has previously complied with the provisions of the applicable chapters with respect to the same legal entity or is currently licensed by the OFR under this ch. 497, F.S.

**Mortgage business schools.** The bill requires permitted mortgage business schools to electronically report the names of students who have successfully completed required training courses. The bill clarifies the renewal process by specifying the renewal cycle. The permit expires on September 30<sup>th</sup> of each year. The bill requires that the license for a branch office be renewed in conjunction with a mortgage brokerage business license and authorizes the commission to adopt certain renewal forms by rule and requires that the renewal forms be submitted to the OFR or organization designated by the commission. The forms must be in a compatible computer-readable form and must comply with the requirements of the chapter.

**Mortgage lender’s liability for attorney’s fees.** The bill holds a lender liable for the payment of attorney fees and costs incurred by a property owner for bringing an action against the lender for

the reimbursement of any penalty or fees imposed by the insurer, and paid by the property owner, for purposes of reinstating an insurance policy that lapsed or the additional premium for obtaining a new policy because the lender failed to pay the insurance premium.

**Consumer Finance, Chapter 516, F.S. (Sections 24-31)**

**Liquid assets.** The bill clarifies that an applicant must provide evidence of liquid assets of at least \$25,000. The failure to meet this requirement is currently grounds for denial of licensure and disciplinary action under s. 516.07(1)(b).

**Securities, Chapter 517, F.S. (Sections 32-39)**

**Branch offices.** The bill amends the definition of “branch office” to conform to uniform federal standard recently adopted by the Securities and Exchange Commission. The renewal deadline for branch offices is changed from March 31st to December 31<sup>st</sup> to allow renewal fees to be submitted through NASD.

**Securities Guaranty Fund.** The bill authorizes the OFR to prescribe rules for the procedures, form of submissions and guidelines of notices and claims.

**Uniform forms.** The commission is authorized to adopt by rule uniform forms that have been approved by the Securities and Exchange Commission, which are included in the bill.

**Canadian dealers.** The bill revises the registration process for Canadian dealers to allow notice filings and eliminates the registration requirements and fees for Canadian agents under certain conditions.

**Investment advisers.** State-registered investment advisers are required to file through the national Investment Adviser Registration Depository (IARD).

**Title Loan and Retail Installment Loan Provisions (See General Licensing Provisions Applicable to Multiple Chapters, above)**

**Money Transmitters, Chapter 560, F.S. (Sections 53-66)**

**Control of money transmitter.** The bill provides that a person has control over a money transmitter if the individual, partnership, corporation, trust, or other organization possesses the power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. It also creates a presumption that a person has control of a company under certain specified circumstances or the OFR determines, after notice and opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the activities of the money transmitter.

**Permissible investments.** The bill clarifies that the permissible investments mandated by the section must be valued in accordance with accounting principles generally accepted in the United States.

**Registration terms.** The bill provides for a 24-month renewal of a registration, if the registrant submits information and fees required by commission rule. Currently, the OFR is required to

renew registration upon the receipt of a completed renewal form and payment of the nonrefundable fee.

**Other Provisions (Sections 67-73)**

**Safe Deposit Boxes.** The bill reconciles conflicts between the 2002 amendments to the Probate Code and provisions of the Banking Code relating to safe-deposit boxes. The bill amends s. 655.935, F.S., which provides a search procedure for the contents of a safe deposit box of a deceased lessee (decedent), to specify that the box includes the box co-leased by the decedent. Access granted to the safe-deposit box pursuant to this section is not considered the initial opening of the box by a personal representative appointed by the court, as provided in s. 733.6065. Section 655.936, F.S., which relates to delivery of safe-deposit box contents to the personal representative of the decedent, is amended to specify that the personal representative is appointed by a court in this state or a court of any other state, as applicable, and deletes current references that, as applicable, a personal representative is a “resident” or is “foreign.”

Section 655.937, F.S., is amended to provide that, unless specifically provided in the lease or rental agreement to the contrary, when a safe-deposit box is rented or leased in the names of two or more lessees, access to the box will be granted to either lessee and to fiduciaries and personal representatives, as specified. This provision also distinguishes the right of access by a co-lessee from the rights and responsibilities of others granted access to the safe-deposit box after the death or incapacity of another co-lessee, and provides procedures for a written inventory of the contents of the box.

The bill appropriates \$700,515 from the Regulatory Trust Fund to the Office of Financial Regulation for implementing mortgage broker testing, for Fiscal Year 2006-07, by a third-party vendor. An applicant will pay the OFR a fee not to exceed \$100 for each examination.

The bill extends the time that a financing statement filed under previous law is effective for purposes of satisfying the requirements for perfecting a security interest under the provisions of the Uniform Commercial Code, chapter 679, F.S., from June 30, 2006, to December 31, 2006.

The bill takes effect October 1, 2006, except as otherwise provided in the bill.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:****A. Tax/Fee Issues:**

Canadian agents of Canadian dealers are no longer subject to the \$30 annual registration fee. Currently there are 1,775 Canadian agents registered in Florida. This will represent a savings to them of \$30 each, or \$53,250. Additional fees authorized to be charged to licensees are described in the "Private Sector Impact" section of this analysis, below.

**B. Private Sector Impact:****Registration of Investment Advisers**

The bill requires 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 a one-time fee of \$150 initially and a \$70 annual fee thereafter. Investment advisers currently pay a \$200 annual registration fee to the OFR and will continue to pay this fee in addition to the IARD fees. Florida currently has 1,100 state-registered investment advisers, of which 680 have already converted their information to IARD and paid the initial \$150 fee. The remaining 420 will be required to pay the initial one-time fee (totaling \$63,000) and the \$70 fee annually thereafter. Filing the information with IARD will allow the faster and uniform processing of applications.

**Authorization for Mortgage Broker Examination Fee**

The OFR is authorized to charge an examination fee not to exceed \$100 for a third-party vendor to administer the test. Currently, the application fee includes the examination fee. Last fiscal year the OFR received 19,710 mortgage broker applications and the average cost per application was \$21.31, which was included in the application fee. Presently, the OFR only administers the mortgage broker test once a month. The bill would allow the commission to adopt a rule to allow a third party to administer the test via computer. This would allow applicants to schedule a date, time and location more convenient to them. The applicant would immediately receive their score to know whether they need to retake the test and could reschedule an immediate retake if necessary, rather than waiting until the following month to retake the test.

**Increase in Maximum Fee Permitted to Be Charged by Consumer Finance Lender**

The bill will allow an increase in the maximum fee that a lender may charge the customer as an investigative fee for a consumer finance loan from the current \$10 to \$25.

**Recovery of Attorney's Fees and Costs**

If a property owner brings an action under s. 501.137, F.S., against a mortgage lender that failed to pay insurance premiums or taxes from escrow funds, and if, as a result, the property owner incurred penalties or fees for the reinstatement of the insurance policy or the issuance of a new policy, the property owner would also be entitled to recovering attorney fees and costs associated with bringing such action. Although it may be implied,

the bill does not expressly provide that the property owner must prevail in an action to be entitled to attorney's fees.

C. **Government Sector Impact:**

**Elimination of the Canadian Agent Registration Fee**

The fees will remain unchanged for Canadian dealers, although the registration process will change. Canadian agents currently register with the State, but will no longer be required to register. Currently there are 1,775 Canadian agents registered. This will represent a savings to them of \$30 each, or \$53,250, with a resulting loss to the General Revenue Fund.

**Authorization for Mortgage Broker Examination Fee**

For FY 2006-07, the OFR anticipates receiving \$700,515 in fees, which would be deposited in the Regulatory Trust Fund, based on an examination fee of \$100. These funds would be used to pay the third-party vendor. For FY 2007-08, the OFR anticipates receiving \$1,401,030 in examination fees. The OFR estimates that expenses will be directly offset by revenues established to cover actual costs. Currently, the application fee includes the examination fee. Presently, the average cost to administer the test is \$420,000 per year. Last fiscal year the OFR received 19,710 mortgage broker applications and the average cost per application based on those numbers was \$21.31, which was included in the application or renewal fee.

**Fingerprint Requirements**

Currently OFR may require each officer, director or ultimate equitable owner of 10 percent or more of the applicant to submit a fingerprint card for submission to the Florida Department of Law Enforcement and the Federal Bureau of Investigations. The bill would expand the fingerprint card requirement to include a control person, member, partner or joint venturer of the applicant. At this time, the OFR is unable to determine the number of individuals that would be impacted by the requirement. The cost per person would be established by FDLE, which is currently \$47 each for processing criminal history checks.

**IARD Registration Fees**

Revenues to the State will be unchanged. Filing the information with IARD allows the OFR to share registration information with other states and federal authorities, allows faster and uniform processing of applications. (See Private Sector Impact, above.)

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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