

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1125 Mortgage Brokering and Lending
SPONSOR(S): Policy & Budget Council and Richter
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	<u>6 Y, 0 N</u>	<u>Holt</u>	<u>Haug</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u>10 Y, 0 N, As CS</u>	<u>Holt</u>	<u>Thorn</u>
3) <u>Policy & Budget Council</u>	<u>22 Y, 0 N, As CS</u>	<u>Martin</u>	<u>Hansen</u>
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

The bill creates a comprehensive consumer protection package relating to mortgages. Bill provisions provide that mortgage brokers and lenders supply to borrowers detailed disclosures for various loan products. The bill requires establishment of at least 4 hours continuation education that specifically addresses Chapter 494, Florida Statutes (F.S.), and corresponding rules. The bill also authorizes The Office of Financial Regulation (OFR) within the Department of Financial Services (DFS) to take enforcement action against those mortgage brokers and mortgage lenders who violate the federal Real Estate Settlement Procedures Act or the federal Truth-in-Lending Act.

The bill creates the Florida Residential Mortgage Fraud Act. The bill provisions address mortgage fraud by providing another tool for prosecuting those who commit this crime. The bill provides definitions of mortgage fraud. There are also included in the bill provisions for venue and penalty.

On February 16, 2007, the Criminal Justice Impact Conference determined that this bill would have an insignificant prison bed impact on the Department of Corrections.

The annual increase in Regulatory Trust Fund revenues that may result from this bill are estimated to be \$150,000. Any cost increases required will be minimal, and the OFR will be able to absorb them within current resources.

The act takes effect October 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty – The bill requires mortgage brokers and lenders to provide borrowers with detailed disclosures regarding certain loan products. Provisions in the bill require borrowers to be informed about the risks associated with these loan products as well as any material changes in their terms. Moreover the burden of proving that certain notice requirements have been provided to the borrower is incumbent upon the licensee.

Protects individual liberty: The bill provides additional enforcement and investigative tools for prosecuting mortgage fraud.

Provide limited government – The bill increases the enforcement authority of OFR against mortgage brokers and mortgage lenders who violate the federal Real Estate Settlement Procedures Act or the federal Truth-in-Lending Act. Additionally, OFR will be authorized to take action against the principal representative of a lender based on the actions of the lender's associates or employees. Rulemaking authority is also granted to the Financial Services Commission (Commission) to implement the provisions of the bill.

B. EFFECT OF PROPOSED CHANGES:

Present Situation Sections 1-12

According to OFR, there is no requirement under Chapter 494, F.S., for lenders or mortgage brokers to promptly notify borrowers about subsequent changes in the terms of certain variable rate loan products prior to closing. In some cases, borrowers learn of these changes at closing. Moreover, OFR lacks the authority to enforce federal laws and regulations governing such lending practices.

Likewise, there is no provision in current law that allows the OFR to impose a fee if an applicant requests to review his or her mortgage broker test. When OFR has contracted with a vendor to administer the mortgage broker test, the vendor, if requested by an applicant, imposes a test review fee for an applicant to review his or her test. In a scenario where a review fee is charged by a vendor, OFR has been absorbing that cost.

Proposed Changes

Sections 1-4 of the bill provide amendments to Part I, Chapter 494, F.S., General Provisions.

Section 1: The bill amends s. 494.001, F.S., relating to definitions.

The bill revises the definition of the term "act as a loan originator." The definition specifies the acts that are comprised in the definition. It includes the act of assisting any licensed or exempt entity in negotiating the making of a mortgage loan, including working with a licensed or exempt entity to structure a loan or discussing the terms and conditions necessary for the delivery of the loan product. The revised definition is intended to further clarify that an employee of a licensed mortgage lender or correspondent lender who acts as a wholesale account representative is considered a loan originator. By revising the definition, these individuals will also be required to complete 14 hours of continuing education every two years, and the lender will be required to list them on its quarterly report filed with OFR pursuant to s. 494.0067(9), F.S.

The bill adds a definition for the term "mortgage loan application", which is defined as: "a submission of a borrower's financial information in anticipation of a credit decision, whether written or computer-generated, relating to a mortgage loan. If the submission does not state or identify a specific property, the submission is an application for a prequalification and not an application for a mortgage loan under

this part. The subsequent addition of an identified property to the submission converts the submission to an application for a mortgage loan."

A definition for the term "mortgage brokerage fee" is added which is defined as: "the total compensation to be received by a mortgage brokerage business for acting as a mortgage broker."

Also, the bill adds a definition for the term "business day" which is defined as: "any calendar day except Sunday or a legal holiday."

Section 2: The bill amends s. 494.0014, F.S., relating to cease and desist orders; administrative fines; and refund orders.

This section is amended to allow OFR to impose a fine upon any person who makes or brokers a loan, or a mortgage business school for violations of Part I of Chapter 494, F.S., relating to its general provisions. Currently, OFR has the authority to impose fines under Parts II and III of Chapter 494, F.S., relating to the regulation of mortgage brokers and mortgage lenders, respectively. The bill will broaden OFR authority to impose fines against perpetrators that also violate the general provisions of the chapter.

Section 3: The bill amends s. 494.0029, F.S., relating to mortgage business schools.

In addition to the remedies set forth in 494.0014, F.S., the bill authorizes OFR to revoke, suspend, or place on probation the permit of a mortgage business school that fails to meet the requirements of this section.

Further, permitted mortgage business schools must conduct classes on a 50-minute classroom hour basis, and they must develop procedures to confirm the identity of each attending student in accordance with applicable rules and the chapter. This provision ensures that all students are receiving the same number of instruction hours.

Section 4: The bill amends s. 494.00295, F.S., relating to professional continuing education.

Current law requires that every two years mortgage brokers and mortgage lenders, principal representatives and loan originators for a mortgage lender, as well as correspondent mortgage lenders, successfully complete 14 hours of professional continuation education, pursuant to s. 494.0065, F.S.¹

Although the instructional materials provided in these courses address the requirements of Chapter 494, F.S., there is no minimum number of hours that specifically speaks to all of the chapter provisions and their corresponding rules. Of the 14 hours of continuing education, the bill requires that at least 4 hours address the chapter and the rules.

The bill further amends the section to reduce the time period for the waiver provision that is applicable to the continuing education requirements for mortgage brokers' first time license renewal. Currently, s. 494.00295, F.S., reads in part:

The requirements for professional continuing education for a principal representative are waived for the license renewal of a mortgage lender, correspondent mortgage lender, or mortgage lender pursuant to s. 494.0065 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.

¹ 494.0065 Saving clause

The bill would limit the waiver to those brokers who have completed the 24-hour pre-licensure course within 90 days of the biennial renewal period.

The bill also authorizes OFR to conduct professional continuing education programs. Presently, the statute lists permitted mortgage business schools, or entities specifically exempted from permitting as mortgage business schools (e.g., community colleges, universities, etc.) as the only entities authorized to conduct the programs.

Moreover, the bill creates in paragraph (a) of subsection (3) requirements for electronically transmitted courses (i.e., courses taken via the Internet). All electronically transmitted courses shall require that the time spent attending such courses is equal to the number of qualifying hours awarded a participant attending courses at a permitted facility.

Before a participant receives a course completion certificate, the course provider shall ensure the participant: 1) logged the required hours for a module; 2) completed a comprehensive test on the particular module; and 3) correctly answered all the test questions.

In paragraph (b) of subsection (3), additional requirements are imposed by the bill upon distance education course participants. that providers for distance education courses (i.e., course taken via the mail). The bill requires that the course participants successfully complete a test that covers the course content. The test must consist of at least 100 questions, and the participant must successfully answer at least 75% of the test questions in order to be awarded a certificate of course completion. There is a prohibition provision to keep the course provider from providing the test answers to course participants.

The bill clarifies that the Commission shall adopt rules pursuant to ss. 120.536(1)² and 120.54³, F.S., to administer this section.

Sections 5-8 of the bill provide amendments to Part II, Chapter 494, F.S., Mortgage Brokers.

Section 5: The bill amends s. 494.0033, F.S., relating to mortgage broker's license.

The bill requires a person seeking a mortgage brokers license to have a high school diploma or its equivalent. Currently, this is not a requirement for licensure.

The bill authorizes the Commission to adopt rules prescribing an additional fee that may not exceed \$50 for applicants to review their graded mortgage broker test. Rulemaking is also provided to the Commission regarding the administration of the testing process. However, OFR plans to contract with a vendor to administer the mortgage broker test. According to OFR, the collection of a "review fee" is a standard provision in most vendor contracts.

Section 6: The bill amends s. 494.0038, F.S., relating to mortgage broker disclosures.

There are extensive changes to this section. The following paragraphs summarizes these changes:
Subsection (1): When a mortgage brokerage business (business), in the presence of the borrower, has a lender to accept the borrower's mortgage loan application, the bill requires that within 3 days of the

² 120.536 Rulemaking authority; repeal; challenge.—

(1) A grant of rulemaking authority is necessary but not sufficient to allow an agency to adopt a rule; a specific law to be implemented is also required. An agency may adopt only rules that implement or interpret the specific powers and duties granted by the enabling statute. No agency shall have authority to adopt a rule only because it is reasonably related to the purpose of the enabling legislation and is not arbitrary and capricious or is within the agency's class of powers and duties, nor shall an agency have the authority to implement statutory provisions setting forth general legislative intent or policy. Statutory language granting rulemaking authority or generally describing the powers and functions of an agency shall be construed to extend no further than implementing or interpreting the specific powers and duties conferred by the same statute.

³ 120.54 Rulemaking.—

acceptance, a written, executed mortgage brokerage agreement, between the business and the borrower, is necessary for the business to receive a brokerage fee. Moreover, if the borrower is not present during the transaction between the business and the acceptance of the application, the bill states that the "licensee" shall forward the agreement to the borrower within the same 3-day acceptance window. Additionally, the bill states the "licensee" bears the burden of proving the borrower received and approved the agreement.

In the mortgage brokerage agreement, the bill requires other disclosures be made in its terms that include: 1) the maximum dollar amount the business receives from the lender. The Commission may prescribe rules regarding the acceptable form this disclosure assumes. 2) The nature of the relationship between the business and the lender. 3) A description of how compensation is paid by the lender. 4) A description of how the interest rate affects the compensation paid to the business. Currently, fees are disclosed in terms such as range of points (percentages), instead of dollar amounts. Disclosing the fees in terms of dollars is intended to be more informative for consumers.

Furthermore, unless a loan application fee or other third party fee is accepted by the mortgage brokerage business, the business is not required to disclose to the borrower the exact amount of the fee received from the lender until closing. OFR has shared with staff that it has seen a variety of fees on mortgage brokerage agreements and/or the closing statements that are payable to the mortgage brokerage business, but they have not previously been disclosed as such fees to the borrower (e.g., processing fees, handling fees, loan origination fees, discount fees, etc.). Provisions are included in the bill that require the exact amounts of any payments from the lender to the business be disclosed to the borrower within 3 business days of the business becoming aware of those amounts, or no later than 3 business days before the execution of the closing or settlement documents. The "licensee" bears the burden of proving such notification was provided to the borrower.

Likewise, the bill requires a good faith estimate be signed and dated by the borrower. However, the estimate does not replace the written mortgage brokerage agreement. Clarification is provided in the bill that the estimate is to disclose the total amount of each of the fees that the borrower may reasonably expect to pay if the loan is closed, including, but not limited to, fees earned by the mortgage brokerage business, lender fees, third party fees, and official fees. Additionally, recipient identification of all fees or payments charged the borrower is to be included in the estimate. Those fees may be disclosed in generic terms, such as paid to lender, appraiser, or title company. However, an exception to use of generic terms appears to apply to those fees received by the mortgage brokerage business. Current law provides for inclusion in the terms and conditions how one obtains a refund of such fees, if any.

Not only are disclosures required at the time an adjustable rate mortgage is offered to the borrower, but also whenever the terms of the adjustable loan materially change prior to closing. Prescribed format requirements for these disclosures are also provided in the bill. Similarly, the "licensee" bears the burden of proving such disclosure was provided to the borrower. It is unclear what constitutes a material change in the loan terms.

Section 7: The bill amends s. 494.004, F.S., relating to requirements of licensees.

The bill requires that in every mortgage loan transaction, licensees under ss. 494.003-494.0043, F.S., shall notify a borrower when material changes to the terms of a previously offered loan occurs. This notification must be provided to the borrower within 3 business days after the licensee is made aware of the changes, but not less than 3 business days before closing. The licensee bears the burden of proving the notification was provided and accepted by the borrower.

In addition, the bill allows the borrower to waive notice in writing of material changes in the loan terms if the borrower determines a loan is needed to meet a bona fide personal emergency and the notice requirement would delay the closing. An imminent foreclosure during the 3-day period prior to closing

constitutes a bona fide personal emergency. Further, a description of a borrower's waiver is provided in the bill.

Section 8: The bill amends s. 494.0041, F.S., relating to administrative penalties and fines; license violations.

The bill authorizes the OFR to enforce the provisions of the federal Real Estate Procedures Act and federal Truth in Lending Act, and any regulations adopted under those acts. Currently, the OFR lacks the authority to enforce these federal regulations.

Sections 9-12 of the bill provide amendments to Part III, Chapter 494, F.S., Lenders

Section 9: The bill amends s. 494.0064, F.S., relating to renewal of mortgage lender's license; branch office license renewal.

As part of the license renewal process, lenders must certify that they meet the minimum net worth requirements under the chapter. Currently, such certification is not required.

Section 10: The bill amends s. 494.0067, F.S., relating to requirements of licensees under ss. 494.006-494.007, F.S.

As provided also in section 6 of the bill, the good faith estimate must identify the recipient of all fees and payments charged to the borrower. Those fees may be disclosed in generic terms, such as paid to lender, appraiser, or title company. However, an exception to the use of generic terms appears to apply to those fees received by the mortgage brokerage business. Current law provides for inclusion in the terms and conditions how one obtains a refund of such fees, if any. The licensee bears the burden of proving such disclosures were provided to the borrower.

Not only are disclosure required at the time an adjustable rate mortgage is offered to the borrower, but also whenever the terms of the adjustable loan materially change prior to closing. Prescribed format requirements for these disclosures are also included in the bill. Similarly, the "licensee" bears the burden of proving such disclosure was provided to the borrower. It is unclear what constitutes a material change in the loan terms.

As provided also in section 7 of the bill, the bill provisions require that in every mortgage loan transaction, licensees under ss. 494.003-494.0043, F.S., shall notify a borrower when material changes to the terms of a previously offered loan occurs. This notification must be provided to the borrower within 3 business days after the licensee is made aware of the changes, but not less than 3 business days before closing. The licensee bears the burden of proving the notification was provided and accepted by the borrower.

In addition, the bill allows the borrower to waive notice in writing of material changes in the loan terms if the borrower determines a loan is needed to meet a bona fide personal emergency and the notice requirement would delay the closing. An imminent foreclosure during the 3-day period prior to closing constitutes a bona fide personal emergency. A description of a borrower's waiver is provided in the bill.

Section 11: The bill amends s. 494.0072, F.S., relating to administrative penalties and fines; license violations.

The OFR is authorized by the bill to enforce the provisions of the federal Real Estate Procedures Act and federal Truth in Lending Act, and any regulations adopted under those acts. Currently, the OFR lacks the authority to enforce these federal regulations.

Authorization is also given to the OFR to take disciplinary action against a principal representative of a mortgage lender or correspondent lender based on the actions of the lender's associates or employees. The principal representative is subject to suspension or revocation for an associate or employee's actions if there is a pattern of repeated violations by associates or employees or if the principal broker or principal representative had knowledge of the violations.

Section 12: The bill amends s. 494.0073, F.S., relating to mortgage lender or correspondent mortgage lender when acting as a mortgage brokerage business.

The bill subjects a mortgage lender or a correspondent lender, when acting as a mortgage brokerage business, to the provision of new subsection 494.004(8), F.S., which requires a borrower to be notified of any material changes in the loan terms within 3 business days after the specific entity is made aware of such changes, but not less than three business days before closing.

Section 13:

Present Situation

This section addresses mortgage fraud which is one of the most proliferating of white collar, real property crimes occurring in the U.S. The crime is defined as a material misstatement, misrepresentation, or omissions relied upon by an underwriter or lender to fund, to purchase, or to insure a loan.⁴ According to the Federal Bureau of Investigations' (FBI) statistics, the number of reported mortgage fraud cases more than tripled from 6,890 in 2003 to 21,944 in 2005, based on Suspicious Activity Reports that are required to be filed by financial institutions and certain other entities with the Financial Crimes Enforcement Network of the U.S. Department of the Treasury.

The extent or dollar amount of this type of fraud is unknown. However, the dollar amount potentially exposed to mortgage fraud, according to the Mortgage Bankers' Association, was estimated to have reached \$2.8 trillion in 2004 by the volume of mortgage originations. It is also estimated that up to 10 percent of all residential loan applications have some form of material misrepresentation, both inadvertent and malicious.⁵

There are specific factors that may be attributable to this trend. In recent years, there has been a dramatic growth in the housing market accelerated by low interest rates. This area is vulnerable for exploitation as credit is strong, profits are high, and technology is enhancing criminals' ability to access financial institution data.

Mortgage fraud is divided into two types: fraud for property and fraud for profit. Fraud for property is a misrepresentation made by a borrower or other party in order to qualify for a mortgage loan. The applicant may alter or falsify tax returns or misrepresent income or expenses. Generally, the buyer intends to repay the loan. The FBI estimates that this type of fraud accounts for 20 percent of all the fraud.

Fraud for profit generally involves multiple loan transactions with several financial institutions involved. Parties to these schemes, generally devise a transaction by using fictitious, forged, or altered documents, fraudulently transferring deeds, grossly inflating the value of purchased homes, and submitting fraudulent escrow letters or other documents to mortgage companies. This type of fraud may involve numerous gross misrepresentations regarding the true identity of the buyer or seller, income, assets, collateral, and employment. Various documents relating to title insurance, which confirms the stated owner has title and right to transfer the property, can be altered to change the financial institution lender or omit prior liens. Often, the borrower assumes the identity of another person (straw buyer). The FBI estimates that 80 percent of all mortgage fraud involves collaboration or collusion by industry insiders.

⁴ 1 Federal Bureau of Investigations website: <http://www.fbi.gov/page2/dec05/operationquickflip121405.htm>.

⁵ The Detection, Investigation, and Deterrence of Mortgage Loan Fraud Involving Third Parties: White Paper, Federal Financial Institutions Examination Council, February 2005.

Residential Mortgage Fraud in Florida

In recent years, according to information provided to staff, the investigations, arrests, and prosecutions of mortgage cases have dramatically increased. According to the Miami-Dade Police, the number of reported mortgage and real estate fraud cases increased from 16 in 2003 to 78 in 2006. The FBI reported 1,191 cases of real estate and mortgage fraud cases in Miami, thereby ranking Miami fourth highest in the top ten spots for fraud for the quarter ending September 30, 2006. Los Angeles was ranked first with 2,293 reported cases.

An example case occurred in February 2006; the Florida Office of the Statewide Prosecutor and the Florida Department of Law Enforcement (FDLE) arrested several persons for allegedly conducting mortgage fraud. The mortgage broker completed the loan applications, which included false credit information of the borrowers. A title company approved the transactions with knowledge of false information being filed. Six individuals were charged with participation in an enterprise through a pattern of racketeering activity, racketeer influence and corrupt action (RICO) and conspiracy to commit RICO, under ch. 895, F.S., both of which are first-degree felonies. These types of collaborative activities have resulted in fraud against mortgage lenders exceeding \$3.7 million.

Florida Regulation of Mortgage Brokerage and Lender Transactions

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 Financial Regulation is one of the entities under Commission jurisdiction.

The Office of Financial Regulation (OFR) is responsible for all activities of the Commission relating to the regulation of financial institutions, mortgage brokers and lenders, finance companies, securities industries, and money transmitters.⁶ Mortgage brokers, lenders, and transactions are regulated by the OFR pursuant to chapter 494, F.S., the Mortgage Brokerage and Lending Act. The OFR also is charged with enforcing the Florida Financial Institutions Code, chs. 655-667, F.S.

Mortgage brokerage businesses, lenders, and brokers must apply to the OFR and meet certain licensing standards before they may offer their services to the public. Monetary fines and civil sanctions can be levied if a person or company is discovered to be operating in Florida without being exempt or properly licensed. These entities are subject to periodic examinations to ensure compliance with the laws.

Section 494.0025, F.S., provides that it is unlawful for any person, engaging in a mortgage transaction, to knowingly or willingly employ any scheme to defraud, obtain property by fraud, willful misrepresentation, and to falsify, conceal or cover up a material fact, make any false or fraudulent statement or representation or make or use any false writing or document.

Section 494.0018, F.S., provides that any person who knowingly violates s. 494.0025, F.S., is guilty of a felony of the third degree. If the value of the land and property exceeds \$50,000 and involves five or more victims, then it is a felony of the first degree.

Section 655.0322(5) and (6), F.S., provides criminal penalties for fraudulent transactions involving land or property for the purpose of obtaining a loan. Any person who makes any false statement or willfully overvalues any land or property for the purpose of influencing a financial institution or any other entity authorized to extend credit is guilty of a felony in the second degree. Additionally, any person who knowingly executes or attempts to execute a scheme to defraud a financial institution or other entity authorized to extend credit by means of false representations or fraudulent representations is guilty of a felony of the second degree.

⁶ Section 20.121(3), F.S.

Section 494.001 Definitions.—As used in ss. 494.001-494.0077, F.S., the term: “Person” means an individual, partnership, corporation, association, or other group, however organized.

Prosecution of Residential Mortgage Fraud in Florida

According to information provided to staff, prosecutors in South Florida utilize various criminal provisions to prosecute residential mortgage, including ss. 494.0018, 812.014, 817.03, 817.034(4)(a)(1), 817.54, F.S., and ch. 895, F.S.

Section 812.014, F.S., provides in part that:

(1) A person commits theft if he or she knowingly obtains or uses, or endeavors to obtain or to use, the property of another with intent to, either temporarily or permanently:

(a) Deprive the other person of a right to the property or a benefit from the property.

(b) Appropriate the property to his or her use or to the use of any person not entitled to the use of the property.

(2)(a)1. If the property stolen is valued at \$100,000 or more or is a semitrailer that was deployed by a law enforcement officer;

the offender commits grand theft in the first degree, punishable as a felony of the first degree, as provided in s. 775.082, s. 775.083, or s. 775.084. . .

(b)1. If the property stolen is valued at \$20,000 or more, but less than \$100,000;

the offender commits grand theft in the second degree, punishable as a felony of the second degree, as provided in s. 775.082, s. 775.083, or s. 775.084.

Pursuant to s. 817.03, F.S.: “Making false statement to obtain property or credit.—Any person who shall make or cause to be made any written false statement, in writing, relating to his or her financial condition, assets or liabilities, or relating to the financial condition, assets or liabilities of any firm or corporation in which such person has a financial interest, or for whom he or she is acting, with a fraudulent intent of obtaining credit, goods, money or other property, and shall by such false statement obtain credit, goods, money or other property, shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.”

Section 817.34, F.S., “False entries and statements by investment companies offering stock or security for sale” provides that:

Any person who shall knowingly subscribe to or make or cause to be made, any false statements or false entry in any book of any investment company or exhibit any false paper with the intention of deceiving any person authorized to examine into the affairs of any investment company, or shall make, utter or publish any false statement of the financial condition of any investment company, or the stock, bonds or other securities by it offered for sale, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 817.54, F.S., “Obtaining of mortgage, mortgage note, promissory note, etc., by false representation” provides that:

Any person who, with intent to defraud, obtains any mortgage, mortgage note, promissory note or other instrument evidencing a debt from any person or obtains the signature of any person to any mortgage, mortgage note, promissory

note or other instrument evidencing a debt by color or aid of fraudulent or false representation or pretenses, or obtains the signature of any person to a mortgage, mortgage note, promissory note, or other instrument evidencing a debt, the false making whereof would be punishable as forgery, shall be guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Chapter 895, F.S., is the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. Racketeering activity means to commit, to conspire to commit, or to solicit another person to commit any crime that is chargeable, as delineated in s. 895.02, F.S. This list includes ch. 812, F.S., relating to theft and ch. 817, F.S., relating to fraudulent practices. Section 895.03, F.S., provides that it is unlawful for any person who with criminal intent receives any proceeds derived from a pattern of racketeering activity. Section 895.04, F.S., provides that any person convicted of engaging in activity that is a violation of s. 895.03, F.S., is guilty of a felony of the first degree.

Proposed Changes

Section 13: The bill creates 817.545, F.S. This section may be cited as the "Florida Mortgage Fraud Act."

For the purposes of subsection (2) of s. 817.545, F.S., the bill provides that the term:

"mortgage lending process" means the process through which a person seeks or obtains a residential mortgage loan including, but not limited to, solicitation, application, or origination, negotiation of terms, third-party provider services, underwriting, signing and closing, and funding of the loan. Documents involved in the mortgage lending process include, but are not limited to mortgages, deeds, surveys, inspection reports, uniform residential loan applications or other loan applications; appraisal reports; HUD-1 settlement statements; supporting personal documentation for loan applications such as W-2 forms, verifications of income and employment, credit reports, bank statements, tax returns, and payroll stubs; and any required disclosures.

Subsection (3) of the new section provides that:

A person commits the offense of mortgage fraud if, with the intent to defraud, the person knowingly:

(a) Makes any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that the misstatement, misrepresentation, or omission will be relied on by a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process; provided however that omissions on a loan application regarding employment, income or assets for a loan that does not require this information shall not be a material omission for purposes of this subsection.

(b) Uses or facilitates the use of any material misstatement, misrepresentation, or omission, during the mortgage lending process with the intention that the material misstatement, misrepresentation, or omission will be relied on by a mortgage lender, borrower, or any other person or entity involved in the mortgage lending process; provided however that omissions on a loan application regarding employment, income or assets for a loan that does not require this information shall not be a material omission for purposes of this subsection.

(c) Receives any proceeds or any other funds in connection with the mortgage lending process that the person knew resulted from a violation of paragraph (a) or paragraph (b).

(d) Files or causes to be filed with the clerk of the circuit court for any county of this state a mortgage lending process document which contains a material misstatement, misrepresentation, or omission.

An offense of mortgage fraud shall not be predicated solely upon information lawfully disclosed under federal disclosure laws, regulations, or interpretations related to the mortgage lending process.

For the purpose of venue under section (5), any violation of this section shall be considered to have been committed:

- (a) In the county in which the real property is located; or
- (b) In any county in which a material act was performed in furtherance of the violation.

Any person who violates subsection (3) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

Section 14: This act takes effect October 1, 2007.

C. SECTION DIRECTORY:

- Section 1: The bill amends s. 494.001, F.S., relating to definitions.
- Section 2: The bill amends s. 494.0014, F.S., relating to cease and desist; and refund orders.
- Section 3: The bill amends s. 494.0029, F.S., relating to mortgage business schools.
- Section 4: The bill amends s. 494.00295, F.S., relating to professional continuing education.
- Section 5: The bill amends s. 494.0033, F.S., relating to mortgage broker's license.
- Section 6: The bill amends s. 494.0038, F.S., relating to mortgage broker disclosures.
- Section 7: The bill amends s. 494.004, F.S., relating to requirements of licensees (mortgage brokers and mortgage brokerage businesses).
- Section 8: The bill amends s. 494.0041, F.S., relating to administrative penalties and fines; license violations.
- Section 9: The bill amends s. 494.0064, F.S., relating to renewal of mortgage lender's license; branch office license renewal.
- Section 10: The bill amends s. 494.0067, F.S., relating to requirements of licensees (mortgage lenders) under ss. 494.006-494.007, F.S..
- Section 11: The bill amends s. 494.0072, F.S., relating to administrative penalties and fines; license violations.
- Section 12: The bill amends s. 494.0073, F.S., relating to mortgage lender or correspondent mortgage lender when acting as a mortgage brokerage business.
- Section 13: The bill creates s. 817.545, F.S., Florida Mortgage Fraud Act.
- Section 14: Provides effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Estimated increase of \$150,000 in the Regulatory Trust Fund (Annually)

2. Expenditures:

Any additional costs will be absorbed within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Minimal if any.

2. Expenditures:

Minimal if any.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

The proposed change would allow the Office to pass along the charge for reviewing a mortgage broker test to applicants who wish to review their test. Right now OFR absorbs that cost. The proposed language allows the Office to charge an amount up to the amount actually charged by the test vendor, not to exceed \$50 per test, for the review. During 2005, 675 applicants reviewed their test and during 2006, 1040 applicants requested to review their tests. An estimate of 1000 applicants per year is used above.

Section 2 of this bill would allow OFR to impose a fine upon any person who makes or brokers a loan, or a mortgage business school for violations of Part I of Chapter 494, F.S., relating to its general provisions. Currently, OFR has the authority to impose fines under Parts II and III of Chapter 494, F.S., relating to the regulation of mortgage brokers and mortgage lenders, respectively. The bill will broaden OFR authority to impose fines against perpetrators that also violate the general provisions of the chapter.

There are 129 mortgage business schools currently permitted statewide. The agency estimates that the administrative fine provision contained in section 2 of the bill will have less than a \$100,000 revenue impact on an annual basis. This figure includes persons who make or broker loans in violation of the statute and also the mortgage business schools. Since the Office currently has fine authority under parts II, III, and IV of chapter 494, Florida Statutes, this analysis covers the fine authority that is applicable to individuals with regard to those issues that are not covered elsewhere in the chapter. These fines are estimated to be minimal in nature. For violations that could result in criminal sanctions, the Office would most likely refer those cases for criminal prosecution; and therefore, most likely would not receive administrative fines.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill appears to provide clear powers and duties to the Financial Services Commission to implement provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

HB 1125 is a consumer protection bill. The bill provides for mortgage brokers and lenders to provide detailed disclosures for various loan products in a manner that is clear and timely for borrowers. It also provides for specific training in the form of continuing education to mortgage brokers to make them more aware of Chapter 494 requirements. The bill also authorizes the OFR to take enforcement action against those mortgage brokers and mortgage lenders who violate the federal Real Estate Settlement Procedures Act or the federal Truth-in-Lending Act.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On April 20, 2007 this bill was considered by the Policy and Budget Council and one amendment was adopted which made a technical correction to a directory, and removed language from section 13 of the bill which had specified when a misstatement, misrepresentation, or omission is considered material.

The bill was reported as a council substitute.