

**The Florida Senate**  
**PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT**

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

Prepared By: Commerce Committee

BILL: CS/CS/SB 1824

INTRODUCER: Commerce Committee, Banking and Insurance Committee and Senator Fasano

SUBJECT: Mortgage Brokering and Lending

DATE: April 10, 2007                      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Johnson	Deffenbaugh	BI	Fav/CS
2.	Gordon	Cooper	CM	Fav/CS
3.			GA	
4.				
5.				
6.				

**I. Summary:**

The Committee Substitute (CS) provides greater consumer protections related to the mortgage loan application process and provides greater compliance and enforcement authority for the regulator, the Office of Financial Regulation (OFR). The CS:

- Requires mortgage brokers and lenders offering adjustable rate mortgages to provide borrowers with a copy of the *Consumer Handbook on Adjustable-Rate Mortgages*,<sup>1</sup> which explains the different loan products and the potential risks associated with these products.
- Requires that brokers disclose to borrowers the amount of payment that the brokers will receive from lenders no later than three business days after brokers become aware of the exact amount, and no later than 3 business days prior to closing.
- Requires the good faith estimate to be signed and dated by the business and borrower.
- Requires borrowers to be notified of any material changes to the terms of a previously offered loan within 3 days of being made aware of the change and no later than 3 business days before closing. The licensee bears the burden of proving that the notice was provided and that the borrower accepted the new terms.
- Permits a borrower to waive the right to notice if the borrower determines that the extension of credit is needed to meet a bona fide personal financial emergency and provides a written statement meeting certain criteria to the broker regarding the emergency.

<sup>1</sup> Published by the Board of Governors of the Federal Reserve System and the Office of Thrift Supervision.

- Permits imminent foreclosure to be a basis for a personal financial emergency for which a waiver of notice is sought.
- Authorizes the OFR to pursue an enforcement action against mortgage brokers and mortgage lenders who violate the federal Real Estate Settlement Procedures Act (RESPA) or the federal Truth-in-Lending Act.
- Authorizes the OFR to take action against the principal representative of a lender based on the actions of the lender's associates or employees.
- Authorizes the OFR to impose an administrative fine of up to \$5,000 for each separate violation of part I of the ch. 494, F.S.
- Allows the OFR to charge a fee, not to exceed \$50, for mortgage brokerage applicants to review their mortgage brokerage test results.

This CS substantially amends the following sections of the Florida Statutes: 494.001, 494.0014, 494.0029, 494.00295, 494.0033, 494.0038, 494.004, 494.0041, 494.0064, 494.0067, 494.0072, and 494.0073.

## II. Present Situation:

### **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 Insurance Regulation and the Office of Financial Regulation are under the commission. 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.<sup>2</sup>

Mortgage brokers, lenders, and transactions are regulated by the OFR pursuant to ch. 494, F.S., the Mortgage Brokerage and Lending Act. Part I contains general provisions applicable to entities regulated under ch. 494, F.S., Part II regulates mortgage brokers, and Part III regulates mortgage lenders. 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. These entities are subject to periodic examinations to ensure compliance with the laws. Monetary fines and civil sanctions can be levied if a person or company is discovered to be operating in Florida without being properly licensed or exempt. Current law requires mortgage brokers, and the principal representatives and loan originators of a mortgage lender, correspondent lender, or mortgage lender pursuant to the savings clause,<sup>3</sup> to complete 14 hours of professional continuing education every 2 years.

There is no requirement under ch. 494, F.S., for lenders or mortgage brokers to provide consumers with information on adjustable-rate mortgages. Also, lenders and brokers are not required to promptly notify buyers of material changes in the terms of previously offered loan products. In some cases, borrowers learn of these changes at closing.

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

<sup>3</sup> The savings clause in s. 494.0065, F.S., grandfathered in certain licensees before the current licensing requirements were created.

Additionally, 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. However, 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. When a vendor charges such a fee, OFR incurs that cost instead of being able to pass it on to the test taker.

### **Federal Laws and Regulations Governing the Mortgage Process**

**Federal Truth-In-Lending Act** -- Regulation Z, was issued by the Board of Governors of the Federal Reserve System to implement the federal Truth in Lending Act, which is contained in the Consumer Credit Protection Act (15 U.S.C. 1601 *et seq.*). The purpose of Regulation Z is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The regulation also gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not govern charges for consumer credit. The regulation requires that a maximum interest rate be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on certain mortgages. The regulation prohibits certain acts or practices in connection with credit secured by a consumer's principal dwelling. The regulation also permits consumers to waive their right to rescind a contract if the consumer determines that the extension of credit is needed to meet a bona fide personal emergency. In order to do so, the consumer must give the creditor a dated written statement that describes the emergency, waives the right to rescind and bears the signature of the consumer.

**Real Estate Settlement Procedures Act (RESPA)** -- This act requires that consumers receive disclosures at various times in the transaction and outlaws kickbacks that increase the cost of settlement services. Borrowers are also required to receive disclosures at various times. Some disclosures delineate the costs associated with the settlement, outline lender servicing and escrow account practices, and describe business relationships between settlement service providers. The act also prohibits certain practices that increase the cost of settlement services. For example, RESPA prohibits a person from giving or accepting anything of value for referrals of settlement service business related to a federally related mortgage loan. It also prohibits a person from giving or accepting any part of a charge for services that are not performed. The act also prohibits home sellers from requiring home buyers to purchase title insurance from a particular company.

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

**Section 1** amends s. 494.001, F.S., to revise the definitions relating to the mortgage process. The term, "act as a loan originator," is revised to include, within the definition, the act of assisting any licensed or exempt entity in negotiating the making of a mortgage loan, including, but not limited to, 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 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 persons will be required to complete 14 hours of continuing education every 2 years and the

lender will be required to list these individuals on the quarterly report filed with the OFR under s. 494.0067(9), F.S.

The term, “mortgage brokerage fee,” is defined to mean the total compensation to be received by a mortgage brokerage business for acting as a mortgage broker. The term, “business day,” is defined as any calendar day except Sunday or a legal holiday.

The section also creates a definition of the term “mortgage loan application,” and states:

“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.”

**Section 2** amends s. 494.0014, F.S., to authorize the OFR to impose an administrative fine of up to \$5,000 for each separate violation of Part I of ch. 494, F.S. Currently, the OFR has the authority to impose such administrative fines under Parts II and III of ch. 494, F.S., relating to the regulation of mortgage brokers and mortgage lenders, respectively. The CS will allow the OFR to impose fines against natural persons, entities, and mortgage business schools that violate the general provisions of the chapter found in Part I.

**Section 3** amends s. 494.0029, F.S., relating to mortgage business schools, to authorize the OFR to take disciplinary action against a permitted mortgage business school. The OFR may revoke, suspend or place on probation the permit of a mortgage business school that fails to comply with ch. 494, F.S. This would be in addition to the OFR’s authority in s. 494.0014, F.S., to issue cease and desist orders.

The CS provides that permitted mortgage business schools must conduct classes on the basis of a 50-minute classroom hour in accordance with the requirements of ch. 494, F.S. This provision is needed to ensure that persons are spending the required number of hours in classroom instruction. The CS requires permitted mortgage business schools to develop procedures for confirming, and for actually confirming, the identity of each student attending course offerings.

**Section 4** amends s. 494.00295, F.S., relating to professional continuing education. Current law requires mortgage brokers, and the principal representatives and loan originators of a mortgage lender, correspondent lender, or mortgage lender pursuant to the savings clause, to complete 14 hours of professional continuing education every 2 years. Although the instructional materials address the requirements of ch. 494, F.S., there is not a minimum number of hours required to cover provisions of ch. 494, F.S., and applicable rules. The CS imposes a requirement that at least 4 of the 14 hours of instruction address ch. 494, F.S., and the rules adopted under that chapter.

The OFR is authorized to conduct professional continuing education programs. Currently, the law only lists permitted mortgage business schools and entities specifically exempted from

permitting as mortgage business schools (e.g., community colleges, universities, etc.) as those entities authorized to conduct the programs.

The CS imposes additional requirements for electronically transmitted courses (i.e., courses taken via the internet). The CS requires course providers to: 1) ensure that the number of hours that a participant spends attending the course online is equal to the number of statutorily required hours; 2) require participants to complete a test that comprehensively covers the course content for the particular timed module; and 3) require participants to correctly answer all test questions for the timed module.

The CS imposes additional requirements on course providers for distance education courses (i.e., course taken via the mail). The CS requires that the course participants successfully complete a test that covers the course content. The participant must correctly answer at least 75 percent of the 100 test questions in order to be awarded a certificate of course completion. The CS prohibits the course provider from giving the answers to the test to course participants.

**Section 5** amends s. 494.0033, F.S., relating to mortgage broker's licenses, to authorize the commission to adopt rules authorizing the collection of a fee, not to exceed \$50, from an applicant for purposes of allowing the applicant to review his or her graded mortgage broker test. According to the OFR, the test administrators impose a fee to review the test results. Authority to collect a "review fee" is a standard provision of most vendor contracts. The current law does not authorize the OFR to charge applicants a review fee. The CS also authorizes the Financial Services Commission to adopt rules regarding the administration of the mortgage broker test (e.g., rule governing pre-registration requirements, security measures, scoring, re-test procedures, etc.).

The section reduces the time period for the waiver provision that is applicable to continuing education requirements for mortgage brokers who are renewing their licenses for the first time. Currently, the waiver applies to the biennial license period immediately following the period in which the broker first became licensed. The section limits the waiver to those brokers who have completed the 24-hour pre-licensure course within 90 days of the biennial renewal period. The section also requires an initial applicant to be at least 18 years of age and have a high school diploma or its equivalent.

**Section 6** amends s. 494.0038, F.S., relating to mortgage broker disclosures. The section prohibits a person from receiving a fee as a mortgage broker business unless a mortgage brokerage agreement is signed and dated by the business and the borrower. The section requires a mortgage brokerage agreement to be executed within 3 days after the brokerage business is made aware of the exact amount of the payment from the lender, but no less than 3 business days before the execution of the closing or settlement statement. The licensee bears the burden of proving that such notification was provided to the borrower.

If a mortgage brokerage business is to receive a fee from the lender, the business must disclose to the borrower the maximum dollar amount of the payment that the business will be receiving from the lender in the mortgage brokerage agreement. The mortgage brokerage agreement must disclose the nature of the relationship with the lender, describe how compensation is paid by the lender, and describe how the interest rate affects the compensation paid to the mortgage

brokerage business. The commission may adopt, by rule, the form of disclosure of the brokerage fees received from the lender. Currently, fees are disclosed in terms of a range of points (percentages), not a dollar amount. Disclosing the fees in terms of dollars is intended to be more informative to consumers.

The section revises the written disclosures required to be provided by the mortgage brokerage business prior to the closing or settlement statement. Such disclosures are required to be provided to the applicant within at least 3 days before the execution of the closing or settlement statement. These changes to the disclosures include that the good faith estimate be signed and dated by the borrower. It also clarifies and provides more detail about the disclosures that must be made to the borrower on the good faith estimate. The good faith estimate must state 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. The CS also requires that the good faith estimate identify the recipient of all payments charged to the borrower, and, except for all fees to be received by the mortgage brokerage business, may be disclosed in generic terms (such as paid to the lender, appraiser, officials, title company, or any other third party service provider). The CS specifies that this requirement does not supplant the requirement for a written mortgage brokerage agreement.

Specific disclosure requirements for adjustable rate loans are created. These disclosures must be made at the time an adjustable rate mortgage loan is offered to a borrower and whenever the terms of an adjustable rate mortgage offered materially changes prior to closing. The mortgage broker must furnish the disclosures that are required under ss. 226.18 and 226.19 of Regulation Z (12 C.F.R. ss. 226.18 and 226.19) adopted under the federal Truth in Lending Act, along with the Consumer Handbook on Adjustable-Rate Mortgages, which is published by the Board of Governors of the Federal Reserve System and the Office of Thrift Supervision.

**Section 7** amends s. 494.004, F.S., relating to requirements of licensees for mortgage brokers and mortgage brokerage businesses, this section requires mortgage brokers and mortgage brokerage businesses to notify the borrower when material changes to the terms of the offered mortgage loan occur within 3 business days after being made aware of such changes by the lender, but not less than 3 business days before the signing of the settlement or closing statement. The licensee bears the burden of proving the notification was provided and accepted by the borrower.

This section also permits the borrower to waive the notification required by this section if the borrower determines that the extension of credit is needed to meet a personal financial emergency and the right to receive notice would delay the closing of the loan. Imminent foreclosure is listed as an example of a bona fide personal financial emergency under this section. In order to waive the right to receive notice not less than 3 business days before the signing of a settlement or closing statement, the borrower must provide the licensee with a written statement which describes the personal financial emergency, waives the right to receive notice, bears the borrower's signature, and is not on a printed form prepared by the licensee for the purpose of such a waiver.

**Section 8** amends s. 494.0041, F.S., relating to administrative penalties and fines as well as license violations. The section 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.

**Section 9** amends s. 494.0064, F.S., relating to the renewal of mortgage lender's licenses, to require, that 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** amends s. 494.0067, F.S., relating to requirements of mortgage licensees (mortgage lenders). The CS requires the good faith estimate to identify the recipient of all payments charged to the borrower and, except for the fees to be received by the mortgage brokerage business and the mortgage lender or correspondent mortgage lender, may be disclosed in generic terms such as paid to appraiser, officials, title company, or any other third-party service provider. The lender bears the burden of proving such disclosures were provided to the borrower.

Specific disclosure requirements for adjustable rate mortgage loans are created. These disclosures must be made at the time an adjustable rate mortgage loan is offered to a borrower and whenever the terms of an adjustable rate mortgage offered materially change prior to closing. The mortgage lender must furnish the disclosures that are required under ss. 226.18 and 226.19 of Regulation Z (12 C.F.R. ss. 226.18 and 226.19) adopted under the federal Truth in Lending Act, along with the Consumer Handbook on Adjustable Rate Mortgages, which is published by the Board of Governors of the Federal Reserve System and the Office of Thrift Supervision. The licensee bears the burden of proving such disclosures were provided to the borrower.

In every mortgage loan transaction, each mortgage lender is required to notify the borrower of any material changes in the terms of a mortgage loan previously offered to the borrower within 3 business days after being made aware of such changes by the lender. Such notification must be made no less than 3 business days before the signing of the settlement or closing statement. The mortgage lender bears the burden of proving such disclosures were provided to and accepted by the borrower.

This section also permits the borrower to waive the notification required by this section if the borrower determines that the extension of credit is needed to meet a personal financial emergency and the right to receive notice would delay the closing of the loan. Imminent foreclosure is listed as an example of a bona fide personal financial emergency under this section. In order to waive the right to receive notice not less than 3 business days before the signing of a settlement or closing statement, the borrower must provide the licensee with a written statement which describes the personal financial emergency, waives the right to receive notice, bears the borrower's signature, and is not on a printed form prepared by the licensee for the purpose of such a waiver.

**Section 11** amends s. 494.0072, F.S., relating to administrative penalties and fines and license violations. The section 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.

The CS authorizes 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 only subject to suspension or revocation for an associate's 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** amends s. 494.0073, F.S., relating to mortgage lender or correspondent mortgage lender acting as a mortgage brokerage business. The CS 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 at least 3 business days before the loan closing.

**Section 13** provides an effective date of October 1, 2007

#### **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:

None.

B. Private Sector Impact:

The CS requires additional disclosures relating to a mortgage loan which will assist consumers in understanding and comparing the costs of such loans.

By authorizing 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, consumers will be better protected against unscrupulous participants in the mortgage broker and lending process. Currently, the OFR lacks the authority to enforce these federal regulations.

A mortgage broker applicant would incur a fee, not to exceed \$50, to review his or her test results.

Persons engaging in mortgage broker or lending activities, and subject to ch. 494, F.S., may incur additional administrative expenses associated with the additional disclosures mandated by the CS, and may be subject to administrative fines for any violations of Part I of ch. 494, F.S.

**C. Government Sector Impact:**

The CS authorizes the OFR to pass along the actual cost charged by the test vendor for applicants to review their mortgage broker test. The CS allows the OFR to charge an amount up to the amount actually charged by the test vendor, not to exceed \$50 per test, for the review. Presently, the vendor with which OFR contracts to administer the mortgage broker test imposes a test review fee on applicants requesting a review of their test. In these situations, OFR incurs that cost since there is no provision in current law to allow OFR to charge the applicant a test review fee.

During 2005, 675 applicants reviewed their test and during 2006, 1040 applicants reviewed their tests. The OFR estimates that approximately 1,000 applicants will review their tests in 2007. This fee will not increase revenues to the state. If the current law is not changed, the OFR will continue to incur the cost of the review.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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

None.

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This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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