

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Commerce Committee

BILL: CS/SB 2548

INTRODUCER: Banking and Insurance Committee and Senator Detert

SUBJECT: Loan Origination

DATE: April 6, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Snider</u>	<u>Burgess</u>	<u>BI</u>	Fav/CS
2.	<u>Hrdlicka</u>	<u>Cooper</u>	<u>CM</u>	Favorable
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

Chapter 2009-241, L.O.F., brought the state into compliance with the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act). The S.A.F.E. Act provides for greater accountability and regulation of loan originators (mortgage brokers and mortgage lenders) and enhances consumer protections. It also establishes regulatory requirements for individuals, rather than businesses. Florida’s law provides for a transition, to be completed October 1, 2010, from the current licensure system and categories of licensees to a system that meets the minimum federal requirements of the S.A.F.E. Act.

CS/SB 2548 defines a “loan processor” as an individual licensed as a loan originator but only performing clerical or support duties. This definition is consistent with federal law. A loan processor may work for multiple employers. A person who wishes to act as a loan processor must file a “declaration of intent to engage solely in loan processing” with the Office of Financial Regulation (OFR).

A loan processor may be employed by a company other than a mortgage broker or mortgage lender. This CS provides an exception for loan processors to the prohibition of the payment of

fees or commissions in any mortgage loan transaction to any person or entity other than a licensed or exempt mortgage broker or lender.

The CS provides clarifications as to disclosures provided as part of the good faith estimate process and requires that the borrower acknowledge receipt of the disclosure by signing and dating the document.

The CS removes the current statutory requirement that mortgage lenders file a new license application upon a change of control in the business.

The CS also reenacts s. 494.00255(1)(m), F.S., thereby providing a basis for disciplinary action by OFR for violating provisions of the federal Real Estate Settlement Procedures Act (RESPA), the federal Truth in Lending Act (TILA), or any regulations adopted under such acts, regarding mortgage transactions. Federal changes to the regulations of TILA were effective subsequent to the enactment of ch. 2009-241, L.O.F., which created this statute.

CS/SB 2548 amends ss. 494.00331, 494.0038, and 494.0067, F.S., as amended by ch. 2009-241, L.O.F.

The CS amends s. 494.00255, F.S., and reenacts s. 494.00255(1)(m), F.S.

II. Present Situation:

In response to the recent turmoil in the housing market and reports of abusive lending practices in Florida as well other states, the federal Housing and Economic Recovery Act was enacted on July 30, 2008.¹ Part of that act included new regulations on those writing mortgages, called The Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (S.A.F.E. Act).² The intent of the S.A.F.E. Act is to provide greater accountability and regulation of individual loan originators (mortgage brokers and mortgage lenders) and enhance consumer protections by establishing minimum licensure and registration requirements for loan originators and a national database for consumers to inquire about the credentials and disciplinary history of brokers and lenders.

In 2009, the Legislature passed a bill which brought the state into compliance with the S.A.F.E. Act.³ The bill passed by the Legislature provided for a transition from the current licensure system and categories of licensees to a system meeting minimum federal requirements. Provisions of the law take effect at different times, with the last provisions becoming effective October 1, 2010.

Presently, Florida requires licensure of individual mortgage brokers, as well as mortgage broker and mortgage lender businesses. However employees of the mortgage lender businesses are not separately licensed. On October 1, 2010, in addition to satisfying other minimum requirements, the law will require state licensure and annual renewal of individual loan originators, including employees of mortgage broker and mortgage lender businesses.

¹ Pub. L. No. 110-289 (codified as amended in scattered sections of 12 U.S.C.).

² 12 U.S.C. ss. 5101-5116.

³ Chapter 2009-241, L.O.F.

The S.A.F.E. Act's definition of "residential mortgage loan" includes a loan secured by a consensual security interest on a "dwelling," to include a mobile home or trailer if it is used as a residence.⁴ Therefore, in accordance with the S.A.F.E. Act, under Florida law, motor vehicle retail installment sellers are considered mortgage brokers or mortgage lenders.

Presently pending law changes definitions and creates new sections of statute, while repealing others. Effective October 1, 2010, loan originators, mortgage brokers, and mortgage lenders will be subject to administrative penalties under ch. 494, F.S., set forth in a single statutory section. Currently, mortgage brokers and mortgage lenders are treated separately in s. 494.0041(2)(v), F.S., and s. 494.0072(2)(v), F.S., respectively. Those sections are repealed effective October 1, 2010.⁵

In 2008, the Board of Governors of the Federal Reserve System published its final rule amending Regulation Z of the Truth in Lending Act creating new restrictions or requirements for mortgage lending and servicing.⁶ With one exception,⁷ those changes were effective October 1, 2009.

Also in 2008, the United States Department of Housing and Urban Development published its final rule amending parts of Regulation X of the Real Estate Settlement Procedures Act to include substantial revisions to the Good Faith Estimate and to require settlement disclosures.⁸ Those changes were effective January 16, 2009.

As a general rule, a cross-reference to a specific statute incorporates the language of the referenced statute as it existed at the time the reference was enacted, unaffected by any subsequent amendments to or repeal of the incorporated statute.⁹

III. Effect of Proposed Changes:

Section 1 reenacts s. 494.00255(1)(m), F.S., regarding a basis for disciplinary action by OFR.¹⁰ Section 494.00255(1)(m), F.S., provides that violating any provision of the federal Real Estate Settlement Procedures Act¹¹ or the federal Truth in Lending Act¹² or any regulations adopted under such acts, constitutes a ground for disciplinary action as specified in the same section.

The bill also corrects technical issues in s. 494.00255, F.S. A principal loan originator is a licensed loan originator in charge of and responsible for a mortgage company (lender or broker). Under s. 494.00255(5), F.S., a principal loan originator is held responsible for the violations of his or her supervised loan originators in certain situations. The bill provides a technical amendment to conform cross-references, in that the term "associate" is replaced with "loan

⁴ Pub. L. No. 110-289, 122 Stat. 2654 (2008) at Title V, sec. 1503(8); 12 C.F.R. § 226.2(19).

⁵ Chapter 2009-241, L.O.F., at ss. 37, 56.

⁶ 12 C.F.R Part 226 (Federal Register / Vol. 73, No. 147 / Wednesday, July 30, 2008).

⁷ Mortgages secured by manufactured homes.

⁸ 24 C.F.R Part 3500 (Federal Register / Vol. 73, No. 222 / Monday, November 17, 2008).

⁹ *Williams v. State*, 100 Fla. 1567, 125 So. 358 (Fla. 1930).

¹⁰ Effective October 1, 2010, s. 494.00255, F.S., will replace ss. 494.0041 and 494.0072, F.S., so that loan originators, mortgage brokers, and mortgage lenders are all subject to administrative penalties under ch. 494, F.S., in a single statutory section. Currently, this language appears separately in ss. 494.0041(2)(v) and 494.0072(2)(v), F.S.

¹¹ 12 U.S.C. ss. 2601 et seq.

¹² 15 U.S.C. ss. 1601 et seq.

originator.” The term “associate” is repealed as a term on October 1, 2010, by s. 2, ch. 2009-241, L.O.F.

Section 2 amends s. 494.00331, F.S., regarding loan originator employment. Generally, loan originators are prohibited from working for more than one mortgage broker (business) or lender, whether as a W-2 employee or as a 1099 independent contractor. These changes provide an exception for “loan processors,” who are licensed as loan originators and perform information-gathering tasks, so that they may contract with or be employed by multiple companies.¹³ Loan processors must be licensed as loan originators and have a “declaration of intent” filed with OFR if they wish to engage *solely* in loan processing and work for multiple employers. However, if a loan processor decides to return to standard loan origination activities, the individual may withdraw the declaration of intent and would be subject to the general prohibition against multiple employers or contractors.

This section also provides an exception for loan processors to the general rule in s. 494.0025(8), F.S., which prohibits the payment of fees or commissions in any mortgage loan transactions to any person other than a licensed or exempt mortgage broker (business) or lender. In other words, since loan processors would be allowed to work for multiple employers, his or her earned fees would be paid to the appropriate employing or contracting entity, which may not necessarily be a mortgage broker or lender.

Section 3 amends s. 494.0038(3)(c), F.S., and provides clarification as to the disclosure process required for the good faith estimate. The loan originator must provide to the borrower identification in writing of all payments charged to the borrower at the same time the good faith estimate is provided. Effective January 1, 2010, the Department of Housing and Urban Development implemented new federal rules on the good faith estimate requiring the bundling of the charges to be paid by the borrowers into lump sums. The CS amends s. 494.0038(3)(c), F.S., to bring Florida into compliance with the new federal rules regarding the good faith estimate, but maintains the requirement under Florida law for an itemization of expenditures to be provided to the borrower, which would be a document separate and distinct from the good faith estimate. Itemization of these charges given to the borrower allows the borrower to see the amounts to be charged and who will provide the services on the loan.

The CS also provides that the required disclosure must be signed and dated by the borrower.

Section 4 removes the current statutory requirement that mortgage lenders file a new license application upon a change of control in the business. The same requirement for mortgage broker businesses was removed by s. 36, ch. 2009-241, L.O.F., amending s. 494.004, F.S.

Section 5 provides an effective date of October 1, 2010.

¹³ The definition of “loan processor” is taken directly from the S.A.F.E. Act. 12 U.S.C. s. 5102(4).

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This CS will permit those licensed as loan originators and wishing to act solely as loan processors to work for multiple employers and receive earned fees.

While conforming to current federal law concerning the good faith estimate, the CS requires loan originators to also provide consumers with a separate disclosure document that itemizes charges related to the loan, which will allow the borrower to see the amounts to be charged and who will provide the services on the loan.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Banking and Insurance on March 24, 2010:

The committee substitute deletes the current statutory requirement that mortgage lenders file a new license application, as the result of a change of control in the business.

B. Amendments:

None.

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