State Administration Appropriations Committee

Tuesday, April 11, 2006
9:30 a.m. – 12:00 p.m.
Room 12 HOB

Allan G. Bense
Speaker

Kimberly (Kim) Berfield
Chair

The Florida House of Representatives

Fiscal Council
State Administration Appropriations Committee

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Agenda
Tuesday, April 11, 2006
Time: 9:30 a.m. – 12:00 p.m.
Location: Room 12 HOB

I. Call to Order

II. Roll Call

III. Opening Remarks

IV. Consideration of the following bill(s):

HB 11 CS by Robaina – Indoor Smoking Places

HB 771 CS by Carroll - Cosmetology

HB 911 CS by Bullard – Use of State Facilities as Emergency Shelters

HB 1009 by Cretul – Real Estate Profession Regulation

HB 1091 by Ambler – Insurer Insolvency

HB 1113 CS by Lopez-Cantera – Insurance Agents

HB 1425 by Brutus – Advisory Council on Condominiums

HB 1435 by Harrell – Division of Emergency Management of the Department of Community Affairs

HB 7153 by Detert/Economic Development, Trade & Banking Committee – Financial Entities and Transactions

V. Closing Remarks

VI. Adjournment

221 The Capitol, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 488-6204

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 11 CS Indoor Smoking Places
SPONSOR(S): Robaina and others
TIED BILLS: None **IDEN./SIM. BILLS:** HB 317 1st Eng.; CS/SB 600; CS/SB 1536

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	15 Y, 1 N, w/CS	Morris	Liepshutz
2) State Administration Appropriations Committee		Rayman	Belcher
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

For purposes of ensuring compliance with provisions of the Clean Indoor Air Act limiting those indoor work areas where smoking is allowed, Florida law requires certain alcoholic beverage establishments that allow smoking and that also serve food [those designated as stand-alone bars] to annually submit to the Division of Alcoholic Beverages and Tobacco [Division] in the Department of Business and Professional Regulation (DBPR) an affidavit that certifies compliance with a 10 percent threshold limitation for food sales. Every three years after the initial designation as a stand alone bar, the licensee is required to submit an "agreed upon procedures report" prepared by a Florida Certified Public Accountant that attests to the licensee's compliance with the food sales limitation for the preceding 36-month period.

The bill repeals the requirement that a stand-alone bar submit a CPA-prepared agreed upon procedures report to the Division every three years after receiving the designation as a stand-alone bar. The bill retains the requirement that a stand-alone bar submit an affidavit to the Division certifying compliance with the food sales limitation on an annual basis and provides additional penalties for knowingly making a false statement on the affidavit.

Further, the bill clarifies that a proprietor or other person in charge of an enclosed indoor workplace may not permit smoking in that workplace unless the workplace falls within one of the exceptions created in s. 386.2045, Florida Statutes. The bill further clarifies that the word "person" when used in chapter 386, has the same meaning as in s. 1.01(3), Florida Statutes.

The bill does not have any fiscal impact on state or local government.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government—This bill eliminates a requirement that certain alcoholic beverage establishments [stand-alone bars] submit an "agreed upon procedures report" prepared by a Florida CPA to the Division in the DBPR.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Article X, Section 20 – Smoking in Enclosed Indoor Workplaces

At the November 2002 General Election, voters approved Constitutional Amendment No. 6, to prohibit tobacco smoking in enclosed indoor workplaces. The stated purpose of this constitutional revision, codified as s. 20, art. X, Florida Constitution, was to protect people from the health hazards of second-hand tobacco smoke by prohibiting workplace smoking. The constitutional amendment provided limited exceptions to the prohibition on indoor smoking including an exception for "stand-alone bars". The constitutional amendment required the Legislature to implement the "amendment in a manner consistent with its broad purpose and stated terms." Implementing legislation, Chapter 2003-398, LOF, was subsequently enacted by the 2003 Legislature.

Stand-Alone Bars

The constitutional amendment defined a stand-alone bar to mean:

> ...any place of business devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises; in which the serving of food, *if any, is merely incidental* to the consumption of any such beverage; and that is not located within, and does not share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue. [Emphasis supplied]

Section 561.695, Florida Statutes, created three specific requirements for a stand-alone bar. First, a stand alone bar must be "devoted during any time of operation predominantly or totally to serving alcoholic beverages, intoxicating beverages, or intoxicating liquors, or any combination thereof, for consumption on the licensed premises." Second, the serving of food, if any, must be "merely incidental" to the consumption of alcoholic beverages. Third, the business must not be "located within, [or] share any common entryway or common indoor area with, any other enclosed indoor workplace including any business for which the sale of food or any other product or service is more than an incidental source of gross revenue."

An important caveat of the stand-alone bar definition is the requirement that the serving of food must be "merely incidental" to the consumption of alcoholic beverages. Section 561.695(5), F.S., defines "merely incidental" as a limit that a stand-alone bar derive no more than 10 percent of its gross revenue from the sale of food.[1] The Division is authorized, pursuant to s. 561.695(7), F.S., to audit the records of a stand-alone bar as necessary to ensure compliance. Florida law requires stand-alone bars to annually submit to the Division in the DBPR an affidavit that certifies compliance with a 10 percent

[1] This section also prohibits stand-alone bars from serving free-food, but does allow customary bar snacks to be served without charge.

threshold limitation for food sales. Every three years after the initial designation as a stand alone bar, the licensee is required to submit an "agreed upon procedures report" prepared by a Florida Certified Public Accountant that attests to the licensee's compliance with the food sales limitation for the preceding 36-month period.

CPA Agreed Upon Procedures Reports

Following passage of the 2003 implementing legislation, the Florida Institute of Certified Public Accountants (FICPA) assigned a task force of CPAs that practice in the area of tax administration to review and comment on the legislation and the DBPR proposed rules. The FICPA has expressed concern regarding the proposed rules relating to the required agreed upon procedures report.

According to the FICPA, an "agreed upon procedures report" is defined in section 201 of the Attestation Standards of the American Institute of Certified Public Accountants [AICPA] as:

> An agreed-upon procedures engagement is one in which a practitioner is engaged by a client to issue a report of findings based on specific procedures performed on subject matter. The client engages the practitioner to assist specified parties in evaluating subject matter or an assertion as a result of a need or needs of the specified parties. Because the specified parties require that findings be independently derived, the services of a practitioner are obtained to perform procedures and report his or her findings. The specified parties and the practitioner agree upon the procedures to be performed by the practitioner that the specified parties believe are appropriate. Because the needs of the specified parties may vary widely, the nature, timing, and extent of the agreed-upon procedures may vary as well; consequently, the specified parties assume responsibility for the sufficiency of the procedures since they best understand their own needs. In an engagement performed under this section, the practitioner does not perform an examination or a review, as discussed in section 101, and does not provide an opinion or negative assurance. Instead, the practitioner's report on agreed-upon procedures should be in the form of procedures and findings.
>
> As a consequence of the role of the specified parties in agreeing upon the procedures performed or to be performed, a practitioner's report on such engagements should clearly indicate that its use is restricted to those specified parties.

Further, Section 101 of the Attestation Standards of the AICPA defines an "examination" in which an opinion is given as:

> In an attest engagement designed to provide a high level of assurance (referred to as an examination), the practitioner's objective is to accumulate sufficient evidence to restrict attestation risk to a level that is, in the practitioner's professional judgment, appropriately low for the high level of assurance that may be imparted by his or her report. In such an engagement, a practitioner should select from all available procedures—that is, procedures that assess inherent and control risk and restrict detection risk—any combination that can restrict attestation risk to such an appropriately low level.

It is relevant to note that the Florida Board of Accountancy, which is the governing Board for Florida CPAs, adopts the AICPA standards into their administrative rules.[2]

[2] 61H1-20.0099, FAC – Standards for Attestation Engagements reads in part: "Standards for Attestation Engagements" shall be deemed and construed to mean Statements on Standards for Attestation Engagements published by the American Institute of Certified Public Accountants..."

According to the FICPA, in an agreed-upon procedures engagement or report, a CPA does not render an opinion regarding the sufficiency of the records provided by the client, including the accuracy and completeness of the records. In the context of the statute and rules, a CPA could only certify that the records provided by the stand-alone bar to a CPA reflect a stated percentage of gross food sales. The FICPA maintains that a Florida CPA could be disciplined by the Board of Accountancy for a violation of professional standards if, in the course of preparing the report, the CPA observes irregularities in the client's records, e.g., that the client is withholding pertinent records from the CPA, or the CPA determines that the client may have committed fraud or other malfeasance such as tax evasion and does not note them in the report. Further, the FICPA has expressed the concern that what the CPA is attesting to may not actually meet the Legislature's original expectation.

The FICPA maintains that the statutes and rules do not adequately address the licensee's required record retention and other internal control procedures while CPA standards of professional conduct require great specificity regarding the form in which records must be kept, e.g. whether a CPA can rely upon records maintained in an electronic format. Further, the FICPA is concerned that the statutes or rules do not adequately identify what specific steps or procedures are required by the CPA when addressing the lack of internal controls and the resultant reliability of the records.

The FICPA believes that a CPA's performance of an agreed upon procedures report under the current rules may likely be a violation of professional standards, and, consequently, the FICPA will advise its CPA members to refrain from performing the service for stand-alone bars.

Smoking Violations by Patrons, Employees and Licensees

A Division of Administrative Hearings (DOAH) decision has raised concerns regarding whether the DBPR has sufficient authority to sanction the proprietor or other person in charge of an enclosed indoor workplace with a violation of the act, if a person other than the proprietor or other person in charge of the location is smoking. Section 386.204, F.S., the substantive smoking prohibition, provides that a person may not smoke in an enclosed indoor workplace. Section 386.207(3), F.S., requires that the DBPR or the DOH, upon notification of observed violations of the act, issue to the proprietor or other person in charge of the enclosed indoor workplace a notice to comply with the act and establishes fines for subsequent violations of the act.

In *DBPR v. Old Cutler Oyster Co., Inc., d/b/a Old Cutler Oyster Co.,* DBPR attempted to discipline Old Cutler Oyster Co., an alcoholic beverage licensee, for permitting several patrons to smoke in the licensed premises in violation of s. 386.204, F.S. The licensee did not hold a stand-alone bar designation under s. 561.695, F.S. The Administrative Law Judge (ALJ), in his Recommended Order, held that there is no requirement in the statute that a proprietor or other person in charge of an enclosed indoor workplace must take any specific action when he or she observes a patron (or other non-employee) smoking in the enclosed indoor workplace. The ALJ also questioned whether the civil penalties in s. 386.207(3), F.S., which may be assessed against "the person" who fails to comply with a previously issued "notice to comply," apply to corporate or other non-human entities. The ALJ held that, in the context of s. 386.207(3), F.S., the term "person" appears to be limited to an individual human being. The Recommended Order did not reference the rule of statutory construction in s. 1.01, F.S., which provides that, where the context permits, the term person "includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations."

The division rejected the ALJ's determination that the term "person" did not include a corporation. However, due to the criteria and limitations in s. 120.57(1)(l), F.S., for agency review of an ALJ's findings of fact, conclusions of law, and recommended disposition, the division adopted the recommendations of the ALJ and dismissed the case.

The DOAH decision in *Old Cutler Oyster Co., Inc.,* is also relevant to the Department of Health's (DOH) enforcement of the act. It creates uncertainty regarding the extent to which DOH can sanction proprietors and persons in charge of an enclosed indoor workplace for smoking violations by patrons or other non-employees.

Old Cutler Oyster Co., Inc., did not address the issue of whether the division can sanction an alcoholic beverage licensee under the division's disciplinary authority in s. 561.29, F.S., which authorizes discipline of alcoholic beverage licensees for violations of any law in this state or permitting another person on the licensed premises to violate the laws of this state or the United States, and for maintaining a nuisance on the licensed premises. Although the licensee in *Old Cutler Oyster Co., Inc.,* is an alcoholic beverage licensee, the division did not seek to discipline the licensee pursuant to s. 561.29, F.S.

Penalty Provisions

Section 386.207(3), F.S., provides penalties for violations of the Clean Indoor Air Act by proprietors or persons in charge of an enclosed indoor workplace. The penalty for a first violation against a person who fails to comply with a previously issued "notice to comply" is a fine of not less than $250 and not more than $750.

Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides penalties in the amount of not more than $100 for a first violation and not more than $500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the Clean Indoor Air Act before the implementation of the constitutional smoking prohibition

Signage Requirement

Section 386.206(1), F.S., requires that any person in charge of an enclosed indoor workplace who was required before the adoption of the smoking ban in the State Constitution to post signage regarding designated smoking areas must now post signage stating that smoking is not permitted. Section 386.206(5), F.S., provides that this requirement expires on July 1, 2005.

EFFECT OF PROPOSED CHANGE

CPA Agreed Upon Procedures Reports

This legislation repeals the requirement that a stand-alone bar submit a CPA-prepared agreed upon procedures report to the Division every three years after receiving the designation as a stand-alone bar. The legislation retains the requirement that a stand-alone bar submit an affidavit to the Division certifying compliance with the food sales limitation on an annual basis.

The bill creates a new penalty provision which provides that a vendor's *alcoholic beverage license* may be subject to revocation if the vendor *knowingly* makes a false statement on the annual affidavit required by s. 561.695(5), F.S. Moreover, the Division maintains the authority to conduct compliance audits as deemed necessary pursuant to s. 561.695(7), F.S.

Smoking Violations by Patrons, Employees and Licensees

To clarify the prohibitions and responsibilities relating to smoking in indoor workplaces, the bill amends s. 386.204, F.S., to specify that a proprietor or other person in charge of an enclosed indoor workplace may not permit another person to smoke in the workplace. The bill does not, however, specify what action a proprietor or other person in charge of the workplace must take when a violation occurs. The bill also amends s. 561.695, F.S., to specify that an alcoholic beverage vendor may not permit smoking in the licensed premises unless it is designated as a stand-alone bar. The bill amends s. 386.203, F.S.,

to provide that the term "person" has the same meaning as in the rule of statutory construction in s. 1.01, F.S.

This bill clarifies that the penalties provided in s. 386.207(3), F.S, for violations of the Clean Indoor Air Act will apply to proprietors or other persons in charge of an enclosed indoor workplace. The penalty for a first violation against a person who fails to comply with a previously issued "notice to comply" is a fine of not less than $250 and not more than $750.

Signage Requirement

The bill amends s. 386.206, F.S., to delete an obsolete signage requirement which expired on July 1, 2005.

C. SECTION DIRECTORY:

Section 1. Amends s. 386.203, F.S., and creates a new subsection (7), which specifies that the term "person" has the same meaning as in the rule of statutory construction; makes technical and clarifying changes.

Section 2. Amends subsection (1) of s. 386.204, F.S., and creates a new subsection (2) to specify that a proprietor or other person in charge of an enclosed indoor workplace may not permit another person to smoke in the workplace.

Section 3. Amends subsections (2) and (4) of s. 386.2045, F.S., to conform cross references.

Section 4. Deletes subsections (1) and (5) of s. 386.206, F.S., to remove provisions regarding the posting of signs that expired on July 1, 2005.

Section 5. Amends s. 561.695, F.S., to prohibit smoking in a licensed alcoholic beverage establishment unless it is designated as a stand-alone bar; to provide a penalty for knowingly making a false statement on required affidavits; to delete the requirement for a CPA-prepared procedures report; and to make technical changes.

Section 6. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

changes to conform the language to that contained in HB 317 CS, which has already passed the House and awaits action in the Senate.

CHAMBER ACTION

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1 The Business Regulation Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to indoor smoking places; amending s.
7 386.203, F.S.; defining the term "person" for purposes of
8 the Florida Clean Indoor Air Act; amending s. 386.204,
9 F.S.; prohibiting a proprietor or other person in charge
10 of an enclosed indoor workplace from permitting smoking in
11 that workplace; amending s. 386.2045, F.S.; conforming
12 cross-references; amending s. 386.206, F.S.; deleting
13 obsolete provisions requiring that signs be posted in an
14 enclosed indoor workplace; amending s. 561.695, F.S.;
15 conforming cross-references; prohibiting a vendor from
16 permitting smoking in a licensed premises unless it is
17 designated as a stand-alone bar; providing a penalty for a
18 vendor who knowingly makes a false statement on an
19 affidavit of compliance; deleting a provision requiring
20 that a vendor operating a stand-alone bar certify to the
21 Division of Alcoholic Beverages and Tobacco that it
22 derives only a certain percentage of its gross revenue
23 from the sale of food; providing an effective date.

24
25 Be It Enacted by the Legislature of the State of Florida:
26
27 Section 1. Subsection (5) of section 386.203, Florida
28 Statutes, is amended, present subsections (7) through (13) are
29 renumbered as subsections (8) through (14), respectively, and a
30 new subsection (7) is added to that section, to read:
31 386.203 Definitions.--As used in this part:
32 (5) "Enclosed indoor workplace" means any place where one
33 or more persons engages in work, and which place is
34 predominantly or totally bounded on all sides and above by
35 physical barriers, regardless of whether such barriers consist
36 of or include, without limitation, uncovered openings; screened
37 or otherwise partially covered openings; or open or closed
38 windows, jalousies, doors, or the like.
39 (a) A place is "predominantly" bounded by physical
40 barriers during any time when both of the following conditions
41 exist:
42 1. ~~(a)~~ It is more than 50 percent covered from above by a
43 physical barrier that excludes rain. ~~, and~~
44 2. ~~(b)~~ More than 50 percent of the combined surface area of
45 its sides is covered by closed physical barriers. In calculating
46 the percentage of side surface area covered by closed physical
47 barriers, all solid surfaces that block air flow, except
48 railings, must be considered as closed physical barriers. This
49 section applies to all such enclosed indoor workplaces and
50 enclosed parts thereof without regard to whether work is
51 occurring at any given time.

52 (b) ~~(c)~~ The term does not include any facility owned or
53 leased by and used exclusively for noncommercial activities
54 performed by the members and guests of a membership association,
55 including social gatherings, meetings, dining, and dances, if no
56 person or persons are engaged in work as defined in subsection
57 (13) ~~(12)~~.
58 (7) "Person" has the same meaning as in s. 1.01(3).
59 Section 2. Section 386.204, Florida Statutes, is amended
60 to read:
61 386.204 Prohibition.--Except as otherwise provided in s.
62 386.2045:
63 (1) A person may not smoke in an enclosed indoor
64 workplace~~, except as otherwise provided in s. 386.2045~~.
65 (2) A proprietor or other person in charge of an enclosed
66 indoor workplace may not permit smoking in that enclosed indoor
67 workplace.
68 Section 3. Subsections (2) and (4) of section 386.2045,
69 Florida Statutes, are amended to read:
70 386.2045 Enclosed indoor workplaces; specific
71 exceptions.--Notwithstanding s. 386.204, tobacco smoking may be
72 permitted in each of the following places:
73 (2) RETAIL TOBACCO SHOP.--An enclosed indoor workplace
74 dedicated to or predominantly for the retail sale of tobacco,
75 tobacco products, and accessories for such products, as defined
76 in s. 386.203(9) ~~(8)~~.
77 (4) STAND-ALONE BAR.--A business that meets the definition
78 of a stand-alone bar as defined in s. 386.203(12) ~~(11)~~ and that

79 otherwise complies with all applicable provisions of the
80 Beverage Law and this part.
81 Section 4. Section 386.206, Florida Statutes, is amended
82 to read:
83 386.206 Posting of signs; requiring policies.--
84 ~~(1) The person in charge of an enclosed indoor workplace~~
85 ~~that prior to adoption of s. 20, Art. X of the State~~
86 ~~Constitution was required to post signs under the requirements~~
87 ~~of this section must continue to conspicuously post, or cause to~~
88 ~~be posted, signs stating that smoking is not permitted in the~~
89 ~~enclosed indoor workplace. Each sign posted pursuant to this~~
90 ~~section must have letters of reasonable size which can be easily~~
91 ~~read. The color, design, and precise place of posting of such~~
92 ~~signs shall be left to the discretion of the person in charge of~~
93 ~~the premises.~~
94 (1) ~~(2)~~ The proprietor or other person in charge of an
95 enclosed indoor workplace must develop and implement a policy
96 regarding the smoking prohibitions established in this part. The
97 policy may include, but is not limited to, procedures to be
98 taken when the proprietor or other person in charge witnesses or
99 is made aware of a violation of s. 386.204 in the enclosed
100 indoor workplace and must include a policy which prohibits an
101 employee from smoking in the enclosed indoor workplace. In order
102 to increase public awareness, the person in charge of an
103 enclosed indoor workplace may, at his or her discretion, post
104 "NO SMOKING" signs as deemed appropriate.
105 (2) ~~(3)~~ The person in charge of an airport terminal that
106 includes a designated customs smoking room must conspicuously

107 post, or cause to be posted, signs stating that no smoking is
108 permitted except in the designated customs smoking room located
109 in the customs area of the airport. Each sign posted pursuant to
110 this section must have letters of reasonable size that can be
111 easily read. The color, design, and precise locations at which
112 such signs are posted shall be left to the discretion of the
113 person in charge of the premises.
114 (3) ~~(4)~~ The proprietor or other person in charge of an
115 enclosed indoor workplace where a smoking cessation program,
116 medical research, or scientific research is conducted or
117 performed must conspicuously post, or cause to be posted, signs
118 stating that smoking is permitted for such purposes in
119 designated areas in the enclosed indoor workplace. Each sign
120 posted pursuant to this section must have letters of reasonable
121 size which can be easily read. The color, design, and precise
122 locations at which such signs are posted shall be left to the
123 discretion of the person in charge of the premises.
124 ~~(5) The provisions of subsection (1) shall expire on July~~
125 ~~1, 2005.~~
126 Section 5. Section 561.695, Florida Statutes, is amended
127 to read:
128 561.695 Stand-alone bar enforcement; qualification;
129 penalties.--
130 (1) The division shall designate as a stand-alone bar the
131 licensed premises of a vendor that operates a business that
132 meets the definition of a stand-alone bar in s. 386.203(12) ~~(11)~~
133 upon receipt of the vendor's election to permit tobacco smoking
134 in the licensed premises. A vendor may not permit smoking in the

135 licensed premises unless it is designated as a stand-alone bar
136 under this section.
137 (2) Upon this act becoming a law and until the annual
138 renewal of a vendor's license, a licensed vendor who makes the
139 required election under subsection (1) may permit tobacco
140 smoking on the licensed premises and must post a notice of the
141 ~~such~~ intention at the same location at which the vendor's
142 current alcoholic beverage license is posted. The notice must
143 ~~shall~~ affirm the vendor's intent to comply with the conditions
144 and qualifications of a stand-alone bar imposed pursuant to part
145 II of chapter 386 and the Beverage Law.
146 (3) Only the licensed vendor may provide or serve food on
147 the licensed premises of a stand-alone bar. Other than customary
148 bar snacks as defined by rule of the division, the licensed
149 vendor may not provide or serve food to a person on the licensed
150 premises without requiring the person to pay a separately stated
151 charge for the food that reasonably approximates the retail
152 value of the food.
153 (4) A licensed vendor operating a stand-alone bar must
154 conspicuously post signs at each entrance to the establishment
155 stating that smoking is permitted in the establishment. The
156 color and design of the ~~such~~ signs shall be left to the
157 discretion of the person in charge of the premises.
158 (5) After the initial designation, to continue to qualify
159 as a stand-alone bar the licensee must provide to the division
160 annually, on or before the licensee's annual renewal date, an
161 affidavit that certifies, with respect to the preceding 12-month
162 period, the following:

163 (a) No more than 10 percent of the gross revenue of the
164 business is from the sale of food consumed on the licensed
165 premises as defined in s. 386.203(12) ~~(11)~~.
166 (b) Other than customary bar snacks as defined by rule of
167 the division, the licensed vendor does not provide or serve food
168 to a person on the licensed premises without requiring the
169 person to pay a separately stated charge for food that
170 reasonably approximates the retail value of the food.
171 (c) The licensed vendor conspicuously posts signs at each
172 entrance to the establishment stating that smoking is permitted
173 in the establishment.
174
175 The division shall establish by rule the format of the affidavit
176 required by this subsection. A licensed vendor shall not
177 knowingly make a false statement on the affidavit required by
178 this subsection. In addition to the penalties provided in
179 subsection (7), a licensed vendor who knowingly makes a false
180 statement on the affidavit required by this subsection may be
181 subject to suspension or revocation of the vendor's alcoholic
182 beverage license under s. 561.29.
183 ~~(6) Every third year after the initial designation, on or~~
184 ~~before the licensee's annual license renewal, the licensed~~
185 ~~vendor must additionally provide to the division an agreed upon~~
186 ~~procedures report in a format established by rule of the~~
187 ~~department from a Florida certified public accountant that~~
188 ~~attests to the licensee's compliance with the percentage~~
189 ~~requirement of s. 386.203(11) for the preceding 36 month period.~~
190 ~~Such report shall be admissible in any proceeding pursuant to s.~~

191 ~~120.57. This subsection does not apply to a stand-alone bar if~~
192 ~~the only food provided by the business, or in any other way~~
193 ~~present or brought onto the premises for consumption by patrons,~~
194 ~~is limited to nonperishable snack food items commercially~~
195 ~~prepackaged off the premises of the stand-alone bar and served~~
196 ~~without additions or preparation; except that a stand-alone bar~~
197 ~~may pop popcorn for consumption on its premises, provided that~~
198 ~~the equipment used to pop the popcorn is not used to prepare any~~
199 ~~other food for patrons.~~
200 (6) ~~(7)~~ The Division of Alcoholic Beverages and Tobacco
201 shall have the power to enforce the provisions of part II of
202 chapter 386 and to audit a licensed vendor that operates a
203 business that meets the definition of a stand-alone bar as
204 provided in s. 386.203(12) ~~(11)~~ for compliance with this section.
205 (7) ~~(8)~~ Any vendor that operates a business that meets the
206 definition of a stand-alone bar as provided in s.
207 386.203(12) ~~(11)~~ who violates the provisions of this section or
208 part II of chapter 386 shall be subject to the following
209 penalties:
210 (a) For the first violation, the vendor shall be subject
211 to a warning or a fine of up to $500, or both. ~~;~~
212 (b) For the second violation within 2 years after the
213 first violation, the vendor shall be subject to a fine of not
214 less than $500 or more than $2,000. ~~;~~
215 (c) For the third or subsequent violation within 2 years
216 after the first violation, the vendor shall receive a suspension
217 of the right to maintain a stand-alone bar in which tobacco
218 smoking is permitted, not to exceed 30 days, and shall be

219 subject to a fine of not less than $500 or more than $2,000.~~;~~
220 ~~and~~
221 (d) For the fourth or subsequent violation, the vendor
222 shall receive a 60-day suspension of the right to maintain a
223 stand-alone bar in which tobacco smoking is permitted and shall
224 be subject to a fine of not less than $500 or more than $2,000
225 or revocation of the right to maintain a stand-alone bar in
226 which tobacco smoking is permitted.
227 (8) ~~(9)~~ The division shall adopt rules governing the
228 designation process, criteria for qualification, required
229 recordkeeping, auditing, and all other rules necessary for the
230 effective enforcement and administration of this section and
231 part II of chapter 386. The division is authorized to adopt
232 emergency rules pursuant to s. 120.54(4) to implement the
233 provisions of this section.
234 Section 6. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 771 CS Cosmetology
SPONSOR(S): Carroll
TIED BILLS: **IDEN./SIM. BILLS:** SB 1630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	17 Y, 0 N, w/CS	Livingston	Liepshutz
2) Community Colleges & Workforce Committee	7 Y, 0 N, w/CS	Thomas	Ashworth
3) State Administration Appropriations Committee		Rayman	Belcher
4) Commerce Council			
5)			

SUMMARY ANALYSIS

Chapter 477, F.S., regulates the practice of cosmetology which is currently defined to include the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes. Under this practice act, a person could also obtain a specialty registration for more narrow professional services, such as manicuring, pedicuring, or facials. Practitioners may also be registered to practice the occupation of hair braiding, hair wrapping, or body wrapping. Qualifications for licensure as a cosmetologist include 1,200 hours of training at a Florida approved school of instruction and successful completion of the licensure examination. Applicants for registration, as opposed to licensure, must also complete approved training courses relating to their specialty or specific practice.

The bill:

- redefines "cosmetology" to include hair technician services, esthetician services, and nail technician services;
- allows qualified individuals who are authorized to practice, to be licensed as a hair technician, esthetician, nail technician or cosmetologist;
- amends the hair braiding course content requirements and increases the educational hours;
- revises the qualifications for practice, including the allowance of a cosmetologist licensed before January 1, 2007, to perform all services of a licensed cosmetologist; allows a facial specialist registered or enrolled in a cosmetology school before January 1, 2007, to take the exam for an esthetician license; a manicure, pedicure, or nail extension specialist registered or enrolled in a cosmetology school before January 1, 2007, to take the exam for a nail technician license; and allows specialists registered before January 1, 2007, to continue to practice under their specialty registration without taking a licensure examination; provides for the renewal of current specialty registrations;
- revises the requirements for hair technician, esthetician, nail technician and cosmetology applicants and allows persons who were enrolled or began their education prior to January 1, 2007, to take the examination and be licensed as a cosmetologist upon completion of 1,200 educational hours; adds additional procedures for out-of-country and other state endorsement; and
- increases the required educational hours, set by the Board of Cosmetology, for cosmetologists from 1,200 to 1,800, estheticians from 260 to 600, nail specialists from 240 to 350, and hair braiders from 16 to 40.

The Department of Business and Professional Regulation indicates that the additional workload will be handled with existing staff.

The bill provides an effective date of January 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government - The bill requires more education and the development and administration of exams for a new category of licensure, hair technician, as well as more education and the development and administration of exams for an esthetician license and a nail technician license. It also increases the educational hours for a cosmetologist license.

Promote personal responsibility - The bill allows for licensees from another state or country to apply for endorsement rather than by the current requirement of licensure by examination.

The bill allows licensees to provide services at special events (i.e., weddings, proms, corporate events, etc.). Individuals performing the services must be employed by a licensed salon and the scheduling of the event must be made through a licensed salon.

The bill allows individuals who hold a valid cosmetology license in any state or who are authorized to practice in another country, to perform services in conjunction with a department store demonstration and without the requirement that services be performed in a licensed salon.

B. EFFECT OF PROPOSED CHANGES:

Present situation

The Board of Cosmetology (board) within the Department of Business and Professional Regulation (DBPR) is the agency responsible for the regulation of cosmetology under chapter 477, F.S. No person other than a duly licensed cosmetologist can practice cosmetology or use the name or title of a cosmetologist unless exempted under law.

Section 477.013(4), F.S., defines cosmetology to mean the mechanical or chemical treatment of the head, face, and scalp for aesthetic rather than medical purposes, including, but not limited to, hair shampooing, hair cutting, hair arranging, hair coloring, permanent waving, and hair relaxing for compensation. This term also includes performing hair removal, including wax treatments, manicures, pedicures, and skin care services.

In order to be licensed as a cosmetologist, a person must be at least 16 years of age or have received a high school diploma; must pay the required application fee; must satisfy an experience requirement by being authorized to practice cosmetology in another state or country for at least a year or an education requirement of 1,200 hours of training from a cosmetology program licensed pursuant to chapter 1005, F.S., a cosmetology program within the public school system, Cosmetology Division of the Florida School for the Deaf and the Blind, or a government-operated cosmetology program in the state. Finally, the person must pass the licensure examination.

Cosmetology salons and specialty salons are required to be licensed and cosmetology services can only be performed in a licensed salon unless specifically exempted.

Section 477.0135, F.S., exempts certain persons from the provisions of chapter 477, F.S., when practicing pursuant to their professional or occupational responsibilities and duties.

Section 477.0263(3), F.S., permits a person who holds a valid cosmetology license in any country, territory, or jurisdiction of the United States to perform cosmetology services in a location other than a licensed salon when the services are performed in connection with the motion picture, fashion photography, theatrical, or television industry; a photograph studio salon; a manufacturer trade show demonstration; or an educational seminar.

Effect of proposed changes

Section 1. Amends 477.013, F.S., to address the definition of "cosmetology" and the services allowed under the "hair technician" license, the "esthetician" license, and the "nail technician" license; clarify that an esthetician can tint eyebrows or eyelashes, clarify that a hair technician can weave or braid a person's hair; and clarify that a nail technician can manipulate the superficial tissue of a person's forearms, hands or legs below the knee or feet; moves the body wrapping service into the esthetician license; define "salon" and strike the definition of "specialty salon"; amend the definition of shampooing to mean "cleansing" of the hair rather than just "washing" of the hair; clarify the definition of hair braiding to mean "the weaving or interweaving of a person's own natural hair" rather than "the weaving or interweaving of natural human hair."

Section 2. Creates 477.0131, F.S., to specify categories of licensure to include hair technicians, estheticians, nail technicians, and cosmetologists.

Section 3. Amends 477.0132, F.S., to require hair braiding providers to take and pass a course of at least 40 hours consisting of 4 hours of instruction on HIV/AIDS, 5 hours of instruction on sanitation and sterilization, 5 hours of instruction on diseases and disorders of the scalp, 2 hours of instruction on Florida laws and rules, and 24 hours of hands-on instruction in the application and removal of hair braiding; a person may be exempt from the 24 hours of instruction in the application and removal of hair braiding if they demonstrate skill in application and removal of hair braiding through a board-approved examination; body wrappers who hold registrations issued before January 1, 2007, may continue to practice as a body wrapper; the board is required to adopt continuing education requirements for the renewal of body wrapping registrations; and eliminate the allowance for hair braiders, hair wrappers, and body wrappers to practice once their application and fee are submitted.

Section 4. Amends 477.014, F.S., to prohibit the use of "cosmetologist", "hair technician", "esthetician", or "nail technician" and prohibit individuals from practicing as cosmetologists, hair technicians, estheticians or nail technicians without being properly licensed as such; allow cosmetologists licensed before January 1, 2007, to perform all services of a licensed cosmetologist; allow facial specialists and manicure/pedicure/nail extension specialists who are registered or enrolled in school before January 1, 2007, to take the exam for licensure; allow specialists registered before January 1, 2007, to continue to practice under the name of their respective specialty registration without taking the respective licensure exam; give the board rulemaking authority for renewal of registration existing before January 1, 2007.

Section 5. Amends 477.019, F.S., to expand the education requirements, set by the Board of Cosmetology, to make application for examination to include the allowance of applicants to be at least 16 years of age or has received a high school diploma or a GED, or has passed an ability-to-benefit test; require the following educational hour requirements:

a. Hair Technician – 1,000 hours
b. Esthetician – 600 hours (from 260 hours)
c. Nail Technician – 350 hours (from 240 hours)
d. Cosmetologist – 1,800 hours (from 1,200 hours)

The bill allows a student who has enrolled and begun his/her education before January 1, 2007, to take the exam to be licensed as a cosmetology upon completion of 1,200 hours; require a student who begins his/her education on or after January 1, 2007, to comply with the new educational hours before taking the exam; eliminate the ability of a student to petition the board to sit for the examination after completing 1,000 educational hours; allow a graduate of a licensed cosmetology school or a program within the public school system, after submitting a complete application for examination for licensure as a cosmetologist, hair technician, esthetician or nail technician to practice in his/her respective area for a maximum of 60 days, provided he/she practices under the supervision of a licensed professional in a licensed salon; if he/she fails the exam the first time, he/she may continue to practice under the supervision of a licensed professional in a licensed salon for an additional 60 days, provided the applicant applies for the next available exam; the applicant may not continue to practice if he/she fails

the exam twice; allows for the endorsement of current active out-of-country cosmetology licenses so long as those out-of-country qualifications are substantially similar to, equivalent to, or greater than the qualifications required of applicants from Florida; require the board and the department to adopt procedures to expedite the process by which qualified endorsement applicants may obtain information validating his/her licensure status from the applicant's original state or country; allow for work experience to be substituted for required educational hours in the amount and manner provided by board rule; and remove the current 48 hour cap on the number of hours of continuing education refresher courses.

Section 6. Amends 477.0212, F.S., to require the board to adopt rules for license renewal or continuing education; and increase statutory fee caps for the reactivation of an inactive license – from $50 to $100.

Section 7. Amends 477.023, F.S., to add the allowance of the certification of grooming and salon services training programs to the already existing cosmetology training programs within the public school system and does not prevent the government operation of any other cosmetology program in this state.

Section 8. Amends 477.025, F.S., to eliminate the distinction between a cosmetology salon and a specialty salon.

Section 9. Amends 477.026, F.S. to add hair technicians, estheticians, and nail technician categories to the current fee structures; and to eliminate application and endorsement registration fees for specialists.

Section 10. Amends 477.0263, F.S., to exempt individuals conducting department store demonstrations who hold a valid cosmetology license in another state or country to provide cosmetology services outside of a license salon and allow licensees or registrants to perform services outside a licensed salon for special events so long as the person is employed by a licensed salon and appointments for such services are made through a licensed salon.

Section 11. Amends 477.0265, F.S., to change references from "cosmetology" to "in the field of cosmetology."

Section 12. Amends 477.028, F.S., to add conforming language to include "hair technician, esthetician, or nail technician" and change references from "cosmetology" to "in the field of cosmetology."

Section 13. Amends 477.029, F.S., to add conforming language to include "hair technician, esthetician, or nail technician" strike reference to "cosmetology" salon.

Section 14. Repeals s. 477.0201, F.S., relating to specialty registration, qualifications, registration renewal and endorsement.

Section 15. Provides an effective date of January 1, 2007.

C. SECTION DIRECTORY:

Section 1. Amends 477.013, F.S., relating to the definition of "cosmetology" and the services allowed under the "hair technician" license, the "esthetician" license, and the "nail technician" license.

Section 2. Creates 477.0131, F.S., specifying categories of licensure to include hair technician, estheticians, nail technicians, and cosmetologists.

Section 3. Amends 477.0132, F.S., relating to hair braiding, hair wrapping, and body wrapping registration.

Section 4. Amends 477.014, F.S., relating to qualifications for the practice of cosmetology.

Section 5. Amends 477.019, F.S., expanding the education requirements.

Section 6. Amends 477.0212, F.S., requiring the board to adopt rules for license renewal or continuing education; and increase statutory fee caps for the reactivation of an inactive license – from $50 to $100.

Section 7. Amends 477.023, F.S., relating to schools of cosmetology licensure.

Section 8. Amends 477.025, F.S. relating to cosmetology salons; specialty salons; requisites; licensure; inspection; mobile cosmetology salons, and to eliminate the distinction between a cosmetology salon and a specialty salon.

Section 9. Amends 477.026, F.S. relating to fees, revising fee provisions.

Section 10. Amends 477.0263, F.S., relating to cosmetology services to be performed in licensed salon; exception.

Section 11. Amends 477.0265, F.S., relating to prohibited acts to change references from "cosmetology" to "in the field of cosmetology."

Section 12. Amends 477.028, F.S., relating to disciplinary proceedings to add conforming language.

Section 13. Amends 477.029, F.S., relating to penalties to add conforming language.

Section 14. Repeals s. 477.0201, F.S., relating to specialty registration, qualifications, registration renewal and endorsement.

Section 15. Provides an effective date of January 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

B. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

C. FISCAL COMMENTS:

The DBPR projects:

- that the bill has a fiscal impact on the DBPR related to workload, testing services and licensure costs;
- the Division of Professions will need additional Other Personal Services (OPS) staff in the board office and expenses budget for travel as this bill will increase board meeting agendas and require additional travel days; and
- licensure costs will be associated with the creation of the new licenses (new application processing procedures, updating LicensEase to incorporate new licenses and their requirements, creation of new applications forms, renewal processing for new license types, etc.).

The DBPR estimates they will also have additional exam testing costs the first year related to the development of four new examinations for cosmetology licensure. The department indicates that the additional workload will be handled with existing staff.

Fee Caps

The DBPR notes that since first being regulated in 1978, cosmetology fee caps have been at the $25 fee level. Fees for endorsement applications were raised to the current level of $50 in 1982. Fees for reactivation were set at the current level of $50 in 1983. As of December 31, 2005, the balance in the cosmetology account within the Professional Regulation Trust Fund was a negative $1,042,545. Without raising the fee caps, the projected deficit as of June 30, 2009, is estimated to be $5,151,823.

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, does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill gives the board authority to develop continuing education rules for the renewal of body wrapping registrations and all other registrations existing prior to January 1, 2007. The bill allows for work experience to substitute for required educational hours in the amount and manner provided by board rule. The bill provides rulemaking authority for the renewal or reactivation requirements for inactive licensees. There is rulemaking authority which currently exists to include the proposed allowance for hair technicians, estheticians, nail technicians or registered specialists to perform services in a location other than a licensed salon such as a nursing home, hospital or residence when a client, for reasons of ill health, are unable to go to a licensed salon. The bill grants rulemaking authority for the allowance of services outside a licensed salon for special events so long as the individual is employed by a licensed salon and schedules appointments through a licensed salon.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The DBPR notes:

- Section 3. – It is unclear as to how the provision exempting a hair braiding applicant from the required 24 hours of instruction through demonstration of skill in application and removal of hair braiding through a board-approved examination would be implemented.

- Language should be included in the existing statute to show that the department currently issues a full specialty registration. A full specialty registration is merely a combination of the facial and manicure/pedicure/nail extension specialty registrations.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 16, 2006, the Business Regulation Committee adopted four amendments which modified the bill in the following manner and reported the bill favorably with committee substitute.

Amendment #1 and #2 by Carroll - Removes language referencing "manipulating tissue" to avoid conflict with massage therapy.

Amendment #3 by Carroll - Removes language to clarify that an applicant for licensure must provide documentation for approval by endorsement.

Amendment #4 by Carroll - Deletes a duplicate sentence inadvertently placed in the bill.

On April 4, 2006, the Community Colleges and Workforce Committee adopted two amendments which modified the bill in the following manner. This analysis reflects the bill as amended.

Amendment #1 – Removes the increase of the fee caps that the Board of Cosmetology may authorize for the licensing fees collected by DBPR.

Amendment #2 – Removes the word "epilating".

CHAMBER ACTION

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1 The Community Colleges & Workforce Committee recommends the
2 following:
3
4 **Council/Committee Substitute**
5 Remove the entire bill and insert:
6 A bill to be entitled
7 An act relating to cosmetology; amending s. 477.013, F.S.;
8 providing and amending definitions; redefining
9 "cosmetology" to include hair technician, esthetician, and
10 nail technician services; including body wrapping within
11 esthetician services; removing a distinction between
12 specialty salons and other salons; creating s. 477.0131,
13 F.S.; authorizing licensure for hair technicians,
14 estheticians, nail technicians, and cosmetologists;
15 amending s. 477.0132, F.S.; requiring passage of a
16 specified course to receive a hair braiding registration;
17 increasing the total hours of instruction and modifying
18 the content of instruction required to constitute a hair
19 braiding course; providing an exemption from a portion of
20 required hair braiding coursework; eliminating future body
21 wrapping registrations; authorizing renewal of current
22 body wrapping registrations; specifying that only the
23 Board of Cosmetology may review, evaluate, and approve

24 required text; amending s. 477.014, F.S.; revising
25 requirements for qualification to practice under ch. 477,
26 F.S.; authorizing current specialists to sit for licensure
27 examinations in certain circumstances; providing for the
28 renewal of current specialty registrations; amending s.
29 477.019, F.S.; revising qualification, education,
30 licensure and renewal, supervised practice, and
31 endorsement requirements for cosmetologist licenses to
32 include and differentiate qualification, education,
33 licensure and renewal, supervised practice, and
34 endorsement requirements for hair technician, esthetician,
35 and nail technician licenses; requiring the board to adopt
36 certain procedures relating to licensure by endorsement;
37 amending s. 477.0212, F.S.; increasing fee caps for the
38 reactivation of an inactive license; requiring the board
39 to adopt certain rules relating to license renewal or
40 continuing education; amending s. 477.023, F.S.;
41 stipulating that the Department of Education is not
42 prevented from issuing grooming and salon services
43 certification; amending s. 477.025, F.S., relating to
44 cosmetology and specialty salons, requisites, licensure,
45 inspection, and mobile cosmetology salons, to conform;
46 amending s. 477.026, F.S.; revising fee provisions to
47 conform; amending s. 477.0263, F.S., to conform;
48 specifying circumstances under which cosmetology or
49 specialty services may be practiced outside of a licensed
50 salon; amending s. 477.0265, F.S., relating to prohibited
51 acts, to conform; amending s. 477.028, F.S., relating to

52 disciplinary proceedings, to conform; amending s. 477.029,
53 F.S., relating to penalties, to conform; repealing s.
54 477.0201, F.S., relating to specialty registration,
55 qualifications, registration renewal, and endorsement;
56 providing an effective date.
57
58 Be It Enacted by the Legislature of the State of Florida:
59
60 Section 1. Section 477.013, Florida Statutes, is amended
61 to read:
62 477.013 Definitions.--As used in this chapter, the term:
63 (1) "Board" means the Board of Cosmetology.
64 (2) "Department" means the Department of Business and
65 Professional Regulation.
66 (3) "Cosmetologist" means a person who is licensed to
67 engage in the practice of all cosmetology services in this state
68 under the authority of this chapter, including hair technician
69 services, esthetician services, and nail technician services, or
70 a person who is licensed prior to January 1, 2007, to engage in
71 the practice of cosmetology in this state.
72 (4) "Cosmetology" means the practice of performing or
73 offering to perform for compensation any of the following
74 services for aesthetic rather than medical purposes:
75 (a) Hair technician services, which are:
76 1. Treating a person's hair by:
77 a. Providing any method of treatment as a primary service,
78 including arranging, beautifying, lightening, cleansing,

79 coloring, cutting, dressing, processing, shampooing, shaping,
80 singeing, straightening, styling, tinting, or waving;
81 b. Providing a necessary service that is preparatory or
82 ancillary to a service under sub-subparagraph a., including
83 clipping, cutting, or trimming; or
84 c. Cutting a person's hair as a separate and independent
85 service for which a charge is directly or indirectly made
86 separately from charges for any other service.
87 2. Weaving or braiding a person's hair.
88 3. Shampooing and conditioning a person's hair.
89 4. Servicing a person's wig or artificial hairpiece on a
90 person's head in any manner listed in subparagraph 1.
91 5. Treating a person's mustache or beard by coloring,
92 processing, styling, or trimming.
93 (b) Esthetician services, which are:
94 1. Cleansing, exfoliating, or stimulating a person's skin
95 by hand or by using a mechanical device, apparatus, or appliance
96 with the use of any cosmetic preparation, antiseptic, lotion,
97 powder, oil, clay, cream, or appliance.
98 2. Beautifying a person's skin using a cosmetic
99 preparation, antiseptic, lotion, powder, oil, clay, cream, or
100 appliance.
101 3. Administering facial treatments.
102 4. Removing superfluous hair from a person's body using
103 depilatories, threading, waxing, sugaring, or tweezing.
104 5. Tinting eyebrows or eyelashes with products
105 manufactured specifically for eyebrows or eyelashes.

106 6. Body wrapping, which is a treatment program that uses
107 wraps for the purposes of cleansing and beautifying a person's
108 skin for aesthetic rather than medical or weight-loss purposes
109 and is the application of oils, lotions, or other fluids to the
110 body using wraps. Body wrapping does not include manipulation of
111 the body's superficial tissue, other than that resulting from
112 the application of the wrap materials.
113 7. Submersing parts of the body in a bath of clay, oils,
114 lotions, or other fluids.
115 (c) Nail technician services, which are:
116 1. Treating a person's nails by:
117 a. Cutting, trimming, polishing, painting, printing,
118 tinting, coloring, cleansing, manicuring, or pedicuring; or
119 b. Affixing artificial nails, extensions, or capping.
120 2. Cleansing, treating, or beautifying a person's
121 forearms, hands, legs below the knee, or feet ~~mechanical or~~
122 ~~chemical treatment of the head, face, and scalp for aesthetic~~
123 ~~rather than medical purposes, including, but not limited to,~~
124 ~~hair shampooing, hair cutting, hair arranging, hair coloring,~~
125 ~~permanent waving, and hair relaxing for compensation. This term~~
126 ~~also includes performing hair removal, including wax treatments,~~
127 ~~manicures, pedicures, and skin care services~~.
128 (5) "Salon" means a place of business where the practice
129 of one or more of the cosmetology or specialty services are
130 offered or performed for compensation.
131 (6)~~(5)~~ "Specialist" means any person registered pursuant
132 to s. 477.014(6) to practice one or more of the following

133 specialties: ~~holding a specialty registration in one or more of~~
134 ~~the specialties registered under this chapter.~~
135 ~~(6) "Specialty" means the practice of one or more of the~~
136 ~~following:~~
137 (a) Manicuring, or the cutting, polishing, tinting,
138 coloring, cleansing, adding, or extending of the nails, and
139 massaging of the hands. This term includes any procedure or
140 process for the affixing of artificial nails, except those nails
141 which may be applied solely by use of a simple adhesive.
142 (b) Pedicuring, or the shaping, polishing, tinting, or
143 cleansing of the nails of the feet, and massaging or beautifying
144 of the feet.
145 (c) Facials, or the massaging or treating of the face or
146 scalp with oils, creams, lotions, or other preparations, and
147 skin care services, which means the treatment of the skin of a
148 person's body, in addition to a person's head, face, and scalp,
149 by the use of a sponge, brush, cloth, or similar device to apply
150 or remove a chemical preparation or other substance without
151 involving massage, as defined in s. 480.033(3), except that
152 chemical peels may be removed by peeling an applied preparation
153 from the skin by hand.
154 (7) "Shampooing" means the cleansing ~~washing~~ of the hair
155 with soap and water or with a special preparation~~, or applying~~
156 ~~hair tonics~~.
157 ~~(8) "Specialty salon" means any place of business wherein~~
158 ~~the practice of one or all of the specialties as defined in~~
159 ~~subsection (6) are engaged in or carried on.~~

160 (8) ~~(9)~~ "Hair braiding" means the weaving or interweaving
161 of a person's own natural ~~human~~ hair for compensation without
162 cutting, coloring, permanent waving, relaxing, removing, or
163 chemical treatment and does not include the use of hair
164 extensions or wefts.
165 (9) ~~(10)~~ "Hair wrapping" means the wrapping of manufactured
166 materials around a strand or strands of human hair, for
167 compensation, without cutting, coloring, permanent waving,
168 relaxing, removing, weaving, chemically treating, braiding,
169 using hair extensions, or performing any other service defined
170 as cosmetology.
171 (10) ~~(11)~~ "Photography studio salon" means an establishment
172 where the hair-arranging services and the application of
173 cosmetic products are performed solely for the purpose of
174 preparing the model or client for the photographic session
175 without shampooing, cutting, coloring, permanent waving,
176 relaxing, or removing of hair or performing any other service
177 defined as cosmetology.
178 ~~(12) "Body wrapping" means a treatment program that uses~~
179 ~~herbal wraps for the purposes of cleansing and beautifying the~~
180 ~~skin of the body, but does not include:~~
181 ~~(a) The application of oils, lotions, or other fluids to~~
182 ~~the body, except fluids contained in presoaked materials used in~~
183 ~~the wraps; or~~
184 ~~(b) Manipulation of the body's superficial tissue, other~~
185 ~~than that arising from compression emanating from the wrap~~
186 ~~materials.~~

187 ~~(13) "Skin care services" means the treatment of the skin~~
188 ~~of the body, other than the head, face, and scalp, by the use of~~
189 ~~a sponge, brush, cloth, or similar device to apply or remove a~~
190 ~~chemical preparation or other substance, except that chemical~~
191 ~~peels may be removed by peeling an applied preparation from the~~
192 ~~skin by hand. Skin care services must be performed by a licensed~~
193 ~~cosmetologist or facial specialist within a licensed cosmetology~~
194 ~~or specialty salon, and such services may not involve massage,~~
195 ~~as defined in s. 480.033(3), through manipulation of the~~
196 ~~superficial tissue.~~
197 Section 2. Section 477.0131, Florida Statutes, is created
198 to read:
199 477.0131 Hair technician, esthetician, nail technician,
200 and cosmetology licenses.--
201 (1) A person who is otherwise qualified by this chapter
202 and who is authorized to practice all of the services listed in
203 s. 477.013(4)(a) shall be licensed as a hair technician.
204 (2) A person who is otherwise qualified by this chapter
205 and who is authorized to practice all of the services listed in
206 s. 477.013(4)(b) shall be licensed as an esthetician.
207 (3) A person who is otherwise qualified by this chapter
208 and who is authorized to practice all of the services listed in
209 s. 477.013(4)(c) shall be licensed as a nail technician.
210 (4) A person who is otherwise qualified by this chapter
211 and who is authorized to practice all of the services listed in
212 s. 477.013(4) shall be licensed as a cosmetologist.
213 Section 3. Section 477.0132, Florida Statutes, is amended
214 to read:

215 477.0132 Hair braiding, hair wrapping, and body wrapping
216 registration.--
217 (1) A person whose occupation or practice is confined
218 solely to hair braiding shall register with the department,
219 shall pay the applicable registration fees, and shall take and
220 pass a course consisting of a minimum of 40 hours, except as
221 otherwise provided in this subsection. The course shall be
222 approved by the board and shall consist of 4 hours of
223 instruction in HIV/AIDS and other communicable diseases, 5 hours
224 of instruction in sanitation and sterilization, 5 hours of
225 instruction in disorders and diseases of the scalp, 2 hours of
226 instruction regarding laws affecting hair braiding, and 24 hours
227 of instruction in the application and removal of hair braiding.
228 A person who demonstrates skill in the application and removal
229 of hair braiding through a board-approved examination may be
230 exempt from the 24 hours of instruction in the application and
231 removal of hair braiding.
232 ~~(a) Persons whose occupation or practice is confined~~
233 ~~solely to hair braiding must register with the department, pay~~
234 ~~the applicable registration fee, and take a two-day 16 hour~~
235 ~~course. The course shall be board approved and consist of 5~~
236 ~~hours of HIV/AIDS and other communicable diseases, 5 hours of~~
237 ~~sanitation and sterilization, 4 hours of disorders and diseases~~
238 ~~of the scalp, and 2 hours of studies regarding laws affecting~~
239 ~~hair braiding.~~
240 (2) ~~(b)~~ A person ~~Persons~~ whose occupation or practice is
241 confined solely to hair wrapping shall ~~must~~ register with the
242 department, pay the applicable registration fee, and take a one-

243 day 6-hour course. The course shall be board approved and
244 consist of instruction ~~education~~ in HIV/AIDS and other
245 communicable diseases, sanitation and sterilization, disorders
246 and diseases of the scalp, and instruction ~~studies~~ regarding
247 laws affecting hair wrapping.
248 (3) A person holding a registration in body wrapping
249 before January 1, 2007, may continue to practice body wrapping
250 as described in s. 477.013(4)(b)6. The board shall adopt by rule
251 continuing education requirements for the renewal of body
252 wrapping registrations.
253 ~~(c) Unless otherwise licensed or exempted from licensure~~
254 ~~under this chapter, any person whose occupation or practice is~~
255 ~~body wrapping must register with the department, pay the~~
256 ~~applicable registration fee, and take a two-day 12-hour course.~~
257 ~~The course shall be board approved and consist of education in~~
258 ~~HIV/AIDS and other communicable diseases, sanitation and~~
259 ~~sterilization, disorders and diseases of the skin, and studies~~
260 ~~regarding laws affecting body wrapping.~~
261 (4) ~~(d)~~ Only the board may review, evaluate, and approve a
262 course and text required of an applicant for registration under
263 this section ~~subsection~~ in the occupation or practice of hair
264 braiding or~~,~~ hair wrapping~~, or body wrapping~~. A provider of such
265 a course is not required to hold a license under chapter 1005.
266 (5) ~~(2)~~ Hair braiding and~~,~~ hair wrapping~~, and body wrapping~~
267 are not required to be practiced in a ~~cosmetology~~ salon ~~or~~
268 ~~specialty salon~~. When hair braiding or~~,~~ hair wrapping~~, or body~~
269 ~~wrapping~~ is practiced outside a ~~cosmetology~~ salon ~~or specialty~~
270 ~~salon~~, disposable implements shall ~~must~~ be used or all

271 implements shall ~~must~~ be sanitized in a disinfectant approved
272 for hospital use or approved by the federal Environmental
273 Protection Agency.
274 ~~(3) Pending issuance of registration, a person is eligible~~
275 ~~to practice hair braiding, hair wrapping, or body wrapping upon~~
276 ~~submission of a registration application that includes proof of~~
277 ~~successful completion of the education requirements and payment~~
278 ~~of the applicable fees required by this chapter.~~
279 Section 4. Section 477.014, Florida Statutes, is amended
280 to read:
281 477.014 Qualifications for practice.--
282 (1) On and after January 1, 2007, a ~~1979, no~~ person who is
283 not ~~other than a~~ duly licensed or registered under this chapter
284 may not ~~cosmetologist shall~~ practice in any of the cosmetology
285 areas provided in s. 477.013(4) or use the name or title of
286 cosmetologist, hair technician, esthetician, or nail technician.
287 (2) A person licensed or registered under this chapter on
288 or after January 1, 2007, may not practice or hold himself or
289 herself out as qualified to practice in an area in which he or
290 she is not specifically licensed or registered under this
291 chapter.
292 (3) A cosmetologist licensed before January 1, 2007, may
293 perform all the services of a licensed cosmetologist as defined
294 in this chapter.
295 (4) A facial specialist registered or enrolled in a
296 cosmetology school before January 1, 2007, may take the
297 examination for an esthetician license.

298 (5) A manicure, pedicure, or nail extension specialist
299 registered or enrolled in a cosmetology school before January 1,
300 2007, may take the examination for a nail technician license.
301 (6) A specialist registered under this chapter before
302 January 1, 2007, may continue to practice under the name of his
303 or her specialty registration without taking the respective
304 licensure examination. Renewal of all registrations existing
305 before January 1, 2007, shall be accomplished pursuant to rules
306 adopted by the board.
307 Section 5. Section 477.019, Florida Statutes, is amended
308 to read:
309 477.019 Cosmetologists; hair technicians; estheticians;
310 nail technicians; qualifications; licensure; supervised
311 practice; license renewal; endorsement; continuing education.--
312 (1) A person desiring to be licensed in the field of
313 cosmetology ~~as a cosmetologist~~ shall apply to the department for
314 licensure.
315 (2) An applicant is ~~shall be~~ eligible for licensure by
316 examination to practice cosmetology, hair technician services,
317 esthetician services, or nail technician services if the
318 applicant:
319 (a) Is at least 16 years of age or has received a high
320 school diploma or graduate equivalency diploma or has passed an
321 ability-to-benefit test, which is an independently administered
322 test approved by the United States Secretary of Education as
323 provided in 20 U.S.C. s. 1091(d).~~;~~
324 (b) Pays the required application fee, which is not
325 refundable, and the required examination fee, which is

326 refundable if the applicant is determined to not be eligible for
327 licensure for any reason other than failure to successfully
328 complete the licensure examination.~~; and~~
329 (c)1. Is authorized to practice cosmetology in another
330 state or country, has been so authorized for at least 1 year,
331 and does not qualify for licensure by endorsement as provided
332 for in subsection (6); or
333 2.a. Has received a minimum number of hours of training as
334 follows:
335 (I) For a hair technician, 1,000 hours.
336 (II) For an esthetician, 600 hours.
337 (III) For a nail technician, 350 hours.
338 (IV) For a cosmetologist, 1,800 hours.
339 b. The training ~~Has received a minimum of 1,200 hours of~~
340 ~~training as established by the board, which~~ shall include, but
341 need ~~shall~~ not be limited to, the equivalent of completion of
342 services directly related to the practice of cosmetology at one
343 of the following:
344 (I)~~a.~~ A school of cosmetology licensed pursuant to chapter
345 1005.
346 (II)~~b.~~ A cosmetology program within the public school
347 system.
348 (III)~~c.~~ The Cosmetology Division of the Florida School for
349 the Deaf and the Blind, provided the division meets the
350 standards of this chapter.
351 (IV)~~d.~~ A government-operated cosmetology program in this
352 state.

353 c. A person who has enrolled and begun his or her
354 education before January 1, 2007, may take the examination to be
355 licensed as a cosmetologist upon completion of 1,200 hours of
356 education.
357 d. A person who begins his or her education on or after
358 January 1, 2007, shall comply with the hour requirements in sub-
359 subparagraph a. in order to qualify to take his or her
360 respective examination.
361
362 ~~The board shall establish by rule procedures whereby the school~~
363 ~~or program may certify that a person is qualified to take the~~
364 ~~required examination after the completion of a minimum of 1,000~~
365 ~~actual school hours. If the person then passes the examination,~~
366 ~~he or she shall have satisfied this requirement; but if the~~
367 ~~person fails the examination, he or she shall not be qualified~~
368 ~~to take the examination again until the completion of the full~~
369 ~~requirements provided by this section.~~
370 (3) Upon an applicant receiving a passing grade, as
371 established by board rule, on the examination and paying the
372 initial licensing fee, the department shall issue a license to
373 practice in the applicant's respective area of cosmetology
374 provided in s. 477.013(4).
375 (4) After submitting a complete application to take the
376 first available examination for licensure as a cosmetologist,
377 hair technician, esthetician, or nail technician, a graduate of
378 a licensed cosmetology school or a program within the public
379 school system, which school or program is certified by the
380 Department of Education, is eligible to practice in the

381 graduate's respective area for a maximum period of 60 days,
382 provided such graduate practices under the supervision of a
383 professional licensed under this chapter in a licensed salon. A
384 graduate who fails to pass an examination the first time may
385 continue to practice under the supervision of a professional
386 licensed under this chapter in a licensed salon for an
387 additional 60-day period, provided the graduate applies for the
388 next available examination. A graduate may not continue to
389 practice under this subsection if the graduate fails the
390 examination twice. ~~Following the completion of the first~~
391 ~~licensing examination and pending the results of that~~
392 ~~examination and issuance of a license to practice cosmetology,~~
393 ~~graduates of licensed cosmetology schools or cosmetology~~
394 ~~programs offered in public school systems, which schools or~~
395 ~~programs are certified by the Department of Education, are~~
396 ~~eligible to practice cosmetology, provided such graduates~~
397 ~~practice under the supervision of a licensed cosmetologist in a~~
398 ~~licensed cosmetology salon. A graduate who fails the first~~
399 ~~examination may continue to practice under the supervision of a~~
400 ~~licensed cosmetologist in a licensed cosmetology salon if the~~
401 ~~graduate applies for the next available examination and until~~
402 ~~the graduate receives the results of that examination. No~~
403 ~~graduate may continue to practice under this subsection if the~~
404 ~~graduate fails the examination twice.~~
405 (5) Renewal of license registration shall be accomplished
406 pursuant to rules adopted by the board.
407 (6) The board shall adopt rules specifying procedures for
408 the licensure by endorsement of practitioners desiring to be

409 licensed in this state who hold a current active license in
410 another state or country and who have met qualifications
411 substantially similar to, equivalent to, or greater than the
412 qualifications required of applicants from this state. For
413 purposes of this subsection, work experience may be substituted
414 for required educational hours in the amount and manner provided
415 by board rule.
416 (7)(a) The board shall prescribe by rule continuing
417 education requirements for licensees and registered specialists
418 that ~~intended to~~ ensure the protection of the public through
419 updated training of licensees and registered specialists, not to
420 exceed 16 hours biennially, as a condition for renewal of a
421 license or registration as a specialist under this chapter.
422 Continuing education courses shall include, but not be limited
423 to, the following subjects as they relate to the practice of
424 cosmetology: HIV/AIDS ~~human immunodeficiency virus and acquired~~
425 ~~immune deficiency syndrome~~; Occupational Safety and Health
426 Administration regulations; workers' compensation issues; state
427 and federal laws and rules as they pertain to cosmetologists,
428 the practice of cosmetology, salons, specialists, ~~specialty~~
429 ~~salons,~~ and booth renters; chemical makeup as it pertains to
430 hair, skin, and nails; and environmental issues. Courses given
431 at educational ~~cosmetology~~ conferences may be counted toward the
432 number of continuing education hours required if approved by the
433 board.
434 (b) Any person whose occupation or practice is confined
435 solely to hair braiding or~~,~~ hair wrapping~~, or body wrapping~~ is

436 exempt from the continuing education requirements of this
437 subsection.
438 (c) The board may, by rule, require any licensee in
439 violation of a continuing education requirement to take a
440 refresher course or refresher course and examination in addition
441 to any other penalty. ~~The number of hours for the refresher~~
442 ~~course may not exceed 48 hours.~~
443 Section 6. Section 477.0212, Florida Statutes, is amended
444 to read:
445 477.0212 Inactive status.--
446 (1) A ~~cosmetologist's~~ license issued under this chapter
447 that has become inactive may be reactivated under s. 477.019
448 upon application to the department.
449 (2) The board shall adopt ~~promulgate~~ rules relating to
450 licenses that ~~which~~ have become inactive and for the renewal of
451 inactive licenses. The board shall prescribe by rule a fee not
452 to exceed $100 ~~$50~~ for the reactivation of an inactive license
453 ~~and a fee not to exceed $50 for the renewal of an inactive~~
454 ~~license~~. The board shall prescribe by rule the continuing
455 education requirements to be met prior to license renewal or
456 reactivation.
457 Section 7. Section 477.023, Florida Statutes, is amended
458 to read:
459 477.023 Schools of cosmetology; licensure.--A ~~No~~ private
460 school of cosmetology may not ~~shall be permitted to~~ operate
461 without a license issued by the Commission for Independent
462 Education pursuant to chapter 1005. However, this chapter does
463 not ~~nothing herein shall be construed to~~ prevent certification

464 by the Department of Education of grooming and salon services
465 and cosmetology training programs within the public school
466 system or ~~to~~ prevent government operation of any other program
467 of cosmetology in this state.
468 Section 8. Section 477.025, Florida Statutes, is amended
469 to read:
470 477.025 ~~Cosmetology salons; specialty~~ Salons; requisites;
471 licensure; inspection; mobile ~~cosmetology~~ salons.--
472 (1) No ~~cosmetology salon or specialty~~ salon shall be
473 permitted to operate without a license issued by the department
474 except as provided in subsection (11).
475 (2) The board shall adopt rules governing the licensure
476 and operation of salons ~~and specialty salons~~ and their
477 facilities, personnel, safety and sanitary requirements, and the
478 license application and granting process.
479 (3) Any person, firm, or corporation desiring to operate a
480 ~~cosmetology salon or specialty~~ salon in the state shall submit
481 to the department a salon ~~an~~ application form ~~upon forms~~
482 provided by the department, ~~and accompanied by~~ any relevant
483 information requested by the department, and ~~by~~ an application
484 fee.
485 (4) Upon receiving the application, the department may
486 cause an investigation to be made of the proposed ~~cosmetology~~
487 ~~salon or specialty~~ salon.
488 (5) When an applicant fails to meet all the requirements
489 provided herein, the department shall deny the application in
490 writing and shall list the specific requirements not met. No
491 applicant denied licensure because of failure to meet the

492 requirements herein shall be precluded from reapplying for
493 licensure.
494 (6) When the department determines that the proposed
495 ~~cosmetology salon or specialty~~ salon may reasonably be expected
496 to meet the requirements set forth herein, the department shall
497 grant the license upon such conditions as it shall deem proper
498 under the circumstances and upon payment of the original
499 licensing fee.
500 (7) No license for operation of a ~~cosmetology salon or~~
501 ~~specialty~~ salon may be transferred from the name of the original
502 licensee to another. It may be transferred from one location to
503 another only upon approval by the department, which approval
504 shall not be unreasonably withheld.
505 (8) Renewal of license registration for ~~cosmetology salons~~
506 ~~or specialty~~ salons shall be accomplished pursuant to rules
507 adopted by the board. The board is further authorized to adopt
508 rules governing delinquent renewal of licenses and may impose
509 penalty fees for delinquent renewal.
510 (9) The board is authorized to adopt rules governing the
511 periodic inspection of ~~cosmetology salons and specialty~~ salons
512 licensed under this chapter.
513 (10)(a) The board shall adopt rules governing the
514 licensure, operation, and inspection of mobile ~~cosmetology~~
515 salons, including their facilities, personnel, and safety and
516 sanitary requirements.
517 (b) Each mobile salon must comply with all licensure and
518 operating requirements specified in this chapter or chapter 455
519 or rules of the board or department that apply to ~~cosmetology~~

520 salons at fixed locations, except to the extent that such
521 requirements conflict with this subsection or rules adopted
522 pursuant to this subsection.
523 (c) A mobile ~~cosmetology~~ salon must maintain a permanent
524 business address, located in the inspection area of the local
525 department office, at which records of appointments,
526 itineraries, license numbers of employees, and vehicle
527 identification numbers of the licenseholder's mobile salon shall
528 be kept and made available for verification purposes by
529 department personnel, and at which correspondence from the
530 department can be received.
531 (d) To facilitate periodic inspections of mobile
532 ~~cosmetology~~ salons, prior to the beginning of each month each
533 mobile salon licenseholder must file with the board a written
534 monthly itinerary listing the locations where and the dates and
535 hours when the mobile salon will be operating.
536 (e) The board shall establish fees for mobile ~~cosmetology~~
537 salons, not to exceed the fees for ~~cosmetology~~ salons at fixed
538 locations.
539 (f) The operation of mobile ~~cosmetology~~ salons must be in
540 compliance with all local laws and ordinances regulating
541 business establishments, with all applicable requirements of the
542 Americans with Disabilities Act relating to accommodations for
543 persons with disabilities, and with all applicable OSHA
544 requirements.
545 (11) Facilities licensed under part II or part III of
546 chapter 400 shall be exempt from the provisions of this section

547 and a cosmetologist licensed pursuant to s. 477.019 may provide
548 salon services exclusively for facility residents.
549 Section 9. Section 477.026, Florida Statutes, is amended
550 to read:
551 477.026 Fees; disposition.--
552 (1) The board shall set fees according to the following
553 schedule:
554 (a) For hair technicians, estheticians, nail technicians,
555 or cosmetologists, fees for original licensing, license renewal,
556 and delinquent renewal may ~~shall~~ not exceed $25.
557 (b) For hair technicians, estheticians, nail technicians,
558 or cosmetologists, fees for endorsement application,
559 examination, and reexamination may ~~shall~~ not exceed $50.
560 (c) For ~~cosmetology and specialty~~ salons, fees for license
561 application, original licensing, license renewal, and delinquent
562 renewal may ~~shall~~ not exceed $50.
563 ~~(d) For specialists, fees for application and endorsement~~
564 ~~registration shall not exceed $30.~~
565 (d) ~~(e)~~ For specialists, fees for ~~initial registration,~~
566 registration renewal~~,~~ and delinquent renewal may ~~shall~~ not
567 exceed $50.
568 (e) ~~(f)~~ For hair braiders and~~,~~ hair wrappers, ~~and body~~
569 ~~wrappers,~~ fees for registration may ~~shall~~ not exceed $25.
570 (2) All moneys collected by the department from fees
571 authorized by this chapter shall be paid into the Professional
572 Regulation Trust Fund, which fund is created in the department,
573 and shall be applied in accordance with ss. 215.37 and 455.219.

574 The Legislature may appropriate any excess moneys from this fund
575 to the General Revenue Fund.
576 (3) The department, with the advice of the board, shall
577 prepare and submit a proposed budget in accordance with law.
578 Section 10. Section 477.0263, Florida Statutes, is amended
579 to read:
580 477.0263 Cosmetology services to be performed in licensed
581 salon; exceptions ~~exception~~.--
582 (1) Cosmetology or specialty services shall be performed
583 only by licensed cosmetologists, hair technicians, estheticians,
584 nail technicians, or registered specialists in licensed salons,
585 except as otherwise provided in this section.
586 (2) Pursuant to rules established by the board,
587 cosmetology or specialty services may be performed by a licensed
588 cosmetologist, hair technician, esthetician, nail technician, or
589 registered specialist in a location other than a licensed salon,
590 including, but not limited to, a nursing home, hospital, or
591 residence, when a client for reasons of ill health is unable to
592 go to a licensed salon. Arrangements for the performance of such
593 cosmetology or specialty services in a location other than a
594 licensed salon shall be made only through a licensed salon.
595 (3) Any person who holds a valid cosmetology license in
596 any state or who is authorized to practice cosmetology in any
597 country, territory, or jurisdiction of the United States may
598 perform cosmetology services in a location other than a licensed
599 salon when such services are performed in connection with the
600 motion picture, fashion photography, theatrical, or television
601 industry; a photography studio salon; a manufacturer trade show

602 demonstration; a department store demonstration; or an
603 educational seminar.
604 (4) Pursuant to rules established by the board,
605 cosmetology, hair technician, esthetician, nail technician, or
606 specialty services may be performed in a location other than a
607 licensed salon when such services are performed in connection
608 with a special event and are performed by a person who is
609 employed by a licensed salon and who holds the proper license or
610 specialty registration. Scheduling an appointment for the
611 performance of such services in a location other than a licensed
612 salon shall be made through a licensed salon.
613 Section 11. Section 477.0265, Florida Statutes, is amended
614 to read:
615 477.0265 Prohibited acts.--
616 (1) It is unlawful for any person to:
617 (a) Engage in the practice of cosmetology or a specialty
618 without an active license in the field of cosmetology ~~as a~~
619 ~~cosmetologist~~ or registration as a specialist issued by the
620 department pursuant to the provisions of this chapter.
621 (b) Own, operate, maintain, open, establish, conduct, or
622 have charge of, either alone or with another person or persons,
623 a ~~cosmetology salon or specialty~~ salon:
624 1. Which is not licensed under the provisions of this
625 chapter; or
626 2. In which a person not licensed in the field of
627 cosmetology or registered as a ~~cosmetologist or a~~ specialist is
628 permitted to perform cosmetology services or any specialty.

629 (c) Engage in willful or repeated violations of this
630 chapter or of any rule adopted by the board.
631 (d) Permit an employed person to engage in the practice of
632 cosmetology or of a specialty unless such person holds a valid,
633 active license in the field of cosmetology ~~as a cosmetologist~~ or
634 a registration as a specialist.
635 (e) Obtain or attempt to obtain a license or registration
636 for money, other than the required fee, or any other thing of
637 value or by fraudulent misrepresentations.
638 (f) Use or attempt to use a license to practice in the
639 field of cosmetology or a registration to practice a specialty,
640 which license or registration is suspended or revoked.
641 (g) Advertise or imply that skin care services or body
642 wrapping, as performed under this chapter, has ~~have~~ any
643 relationship to the practice of massage therapy as defined in s.
644 480.033(3), except those practices or activities defined in s.
645 477.013.
646 (h) In the practice of cosmetology, use or possess a
647 cosmetic product containing a liquid nail monomer containing any
648 trace of methyl methacrylate (MMA).
649 (2) Any person who violates any provision of this section
650 commits a misdemeanor of the second degree, punishable as
651 provided in s. 775.082 or s. 775.083.
652 Section 12. Section 477.028, Florida Statutes, is amended
653 to read:
654 477.028 Disciplinary proceedings.--
655 (1) The board may ~~shall have the power to~~ revoke or
656 suspend the license of a cosmetologist, hair technician,

657 esthetician, or nail technician licensed under this chapter, or
658 the registration of a specialist registered under this chapter,
659 and may ~~to~~ reprimand, censure, deny subsequent licensure or
660 registration of, or otherwise discipline a cosmetologist, hair
661 technician, esthetician, nail technician, or a specialist
662 licensed or registered under this chapter in any of the
663 following cases:
664 (a) Upon proof that a license or registration has been
665 obtained by fraud or misrepresentation.
666 (b) Upon proof that the holder of a license or
667 registration is guilty of fraud or deceit or of gross
668 negligence, incompetency, or misconduct in the practice or
669 instruction of cosmetology or a specialty.
670 (c) Upon proof that the holder of a license or
671 registration is guilty of aiding, assisting, procuring, or
672 advising any unlicensed person to practice in the field of
673 cosmetology ~~as a cosmetologist~~.
674 (2) The board may ~~shall have the power to~~ revoke or
675 suspend the license of a ~~cosmetology salon or a specialty~~ salon
676 licensed under this chapter; ~~, to~~ deny subsequent licensure of
677 such salon; ~~,~~ or ~~to~~ reprimand, censure, or otherwise discipline
678 the owner of such salon in either of the following cases:
679 (a) Upon proof that a license has been obtained by fraud
680 or misrepresentation.
681 (b) Upon proof that the holder of a license is guilty of
682 fraud or deceit or of gross negligence, incompetency, or
683 misconduct in the operation of the salon so licensed.

684 (3) Disciplinary proceedings shall be conducted pursuant
685 to the provisions of chapter 120.
686 (4) The department may ~~shall~~ not issue or renew a license
687 or certificate of registration under this chapter to any person
688 against whom or salon against which the board has assessed a
689 fine, interest, or costs associated with investigation and
690 prosecution until the person or salon has paid in full such
691 fine, interest, or costs associated with investigation and
692 prosecution or until the person or salon complies with or
693 satisfies all terms and conditions of the final order.
694 Section 13. Section 477.029, Florida Statutes, is amended
695 to read:
696 477.029 Penalty.--
697 (1) It is unlawful for any person to:
698 (a) Hold himself or herself out as a cosmetologist, hair
699 technician, esthetician, nail technician, specialist, hair
700 wrapper, hair braider, or body wrapper unless duly licensed or
701 registered, or otherwise authorized, as provided in this
702 chapter.
703 (b) Operate any ~~cosmetology~~ salon unless it has been duly
704 licensed as provided in this chapter.
705 (c) Permit an employed person to practice cosmetology or a
706 specialty unless duly licensed or registered, or otherwise
707 authorized, as provided in this chapter.
708 (d) Present as his or her own the license of another.
709 (e) Give false or forged evidence to the department in
710 obtaining any license provided for in this chapter.

711 (f) Impersonate any other licenseholder of like or
712 different name.
713 (g) Use or attempt to use a license that has been revoked.
714 (h) Violate any provision of s. 455.227(1), s. 477.0265,
715 or s. 477.028.
716 (i) Violate or refuse to comply with any provision of this
717 chapter or chapter 455 or a rule or final order of the board or
718 the department.
719 (2) Any person who violates the provisions of this section
720 is ~~shall be~~ subject to one or more of the following penalties,
721 as determined by the board:
722 (a) Revocation or suspension of any license or
723 registration issued pursuant to this chapter.
724 (b) Issuance of a reprimand or censure.
725 (c) Imposition of an administrative fine not to exceed
726 $500 for each count or separate offense.
727 (d) Placement on probation for a period of time and
728 subject to such reasonable conditions as the board may specify.
729 (e) Refusal to certify to the department an applicant for
730 licensure.
731 Section 14. Section 477.0201, Florida Statutes, is
732 repealed.
733 Section 15. This act shall take effect January 1, 2007.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **771 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	____	

---

1 Council/Committee hearing bill: State Administration
2 Appropriations Committee
3 Representative(s) Carroll offered the following:
4
5 **Amendment (with directory and title amendments)**
6 On page 12, Line 304 insert after the word "examination."
7
8 Such renewal shall include a full specialty registration, which
9 combines facial and manicure/pedicure/nail extension.
10
11

000000

COUNCIL/COMMITTEE ACTION

ADOPTED	__	(Y/N)
ADOPTED AS AMENDED	__	(Y/N)
ADOPTED W/O OBJECTION	__	(Y/N)
FAILED TO ADOPT	__	(Y/N)
WITHDRAWN	__	(Y/N)
OTHER	_____	

---

1 Council/Committee hearing bill: State Administration
2 Appropriations Committee
3 Representative(s) Carroll offered the following:
4
5 **Amendment (with directory and title amendments)**
6 Remove line(s) 554 through 569 and insert:
7 (a) For hair technicians, estheticians, nail technicians, or
8 cosmetologists, fees for original licensing, license renewal,
9 and delinquent renewal may ~~shall~~ not exceed $50 ~~$25~~.
10 (b) For hair technicians, estheticians, nail technicians, or
11 cosmetologists, fees for endorsement application, examination,
12 and reexamination may ~~shall~~ not exceed $150 ~~$50~~.
13 (c) For ~~cosmetology and specialty~~ salons, fees for license
14 application original licensing, license renewal, and delinquent
15 renewal may ~~shall~~ not exceed $100 ~~$50~~.
16 ~~(d) For specialists, fees for application and endorsement~~
17 ~~registration shall not exceed $30.~~
18 (d) ~~(e)~~ For specialists, fees for ~~initial registration,~~
19 registration renewal~~,~~ and delinquent renewal may ~~shall~~ not
20 exceed $100 ~~$50~~.
21 (e) ~~(f)~~ For hair braiders and~~,~~ hair wrappers, ~~and body~~

22 ~~wrappers,~~ fees for registration may ~~shall~~ not exceed $40 ~~$25~~.
23
24
25 ========== D I R E C T O R Y A M E N D M E N T ==========
26 Remove line(s) and insert:
27
28
29 ========== T I T L E A M E N D M E N T ==========
30 Remove line(s) 47 and insert:
31 conform; increasing fee caps for certain fees, amending s.
32 477.0263, F.S., to conform;

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 911 CS Department of Management Services
SPONSOR(S): Bullard
TIED BILLS: **IDEN./SIM. BILLS:** SB 678

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Domestic Security Committee	6 Y, 0 N, w/CS	Wiggins	Newton
2) State Administration Appropriations Committee		Dobbs	Belcher
3) Governmental Operations Committee			
4) State Administration Council			
5)			

SUMMARY ANALYSIS

The bill requires that the Department of Management Services (DMS) include in the annual state facilities inventory report a list of state owned facilities that have unoccupied space suitable for use as an emergency shelter. The list must be updated annually by May 31 and must be listed by county and municipality.

The bill defines the word "suitable" for emergency shelters if they meet the standards set by the American Red Cross. It defines "unoccupied" as meaning vacant due to suspended operation or nonuse.

This bill shall take effect July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security-The list of unoccupied buildings that can be utilized as shelters will be updated every year by May 31st so all of the counties and municipalities will know what buildings may be used as shelters to safeguard Florida residents in an emergency.

B. EFFECT OF PROPOSED CHANGES:

Current Situation:

Pursuant to the "Capital Facilities Planning and Budgeting Act" of sections 216.015-216.016, F.S., the Department of Management Services (DMS) is required to take inventory of current facilities owned, leased, rented, or otherwise occupied by any agency of the state or judicial branch.[1] To fully comply with this requirement, DMS produces an annual report. This report is available online.[2] Facilities not incorporated in this report include those of the State Board of Administration, Board of Regents, the Community College System, Water Management Districts, local school districts, private correctional facilities and any facilities with less than three thousand square feet in gross area.[3] There are several components to the annual inventory. One, the State Facility Inventory program, includes facility ownership, management responsibility, date assessed, assessor, location, occupancy, size, and other general data. Another component, the Lease Inventory Program, consists of a recording of *all* state leases and those facilities ownership, square footages, costs, beginning and ending dates, and other general data for these leases.

DMS, pursuant to s. 252.385(4) (b) and (c), F.S., is required to incorporate provisions into state agency lease agreements for the use of suitable leased public facilities as public hurricane evacuation shelters. The DMS is also required to consult with local and state emergency management agencies to assess DMS facilities and identify the extent to which each facility has public hurricane evacuation shelter space.[4]

The Department of Community Affairs, Division of Emergency Management ("Division"), must prepare a state comprehensive emergency management plan that can be integrated into and coordinated with the emergency management plans and programs of the Federal Government as required in the "State Emergency Management Act" of sections 252.31-252.60, F.S.[5] The plan must include a shelter component with specific planning provisions and promote shelter activity coordination between the public, private, and nonprofit sectors. This component must include strategies to ensure adequate public shelter space is available in each region of the state; establish strategies for refuge-of-last-resort programs; include plans to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel; provide for a post disaster communications system for public shelters; establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and set forth policy guidance for sheltering people with special needs.[6] The Division has integrated the State

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[1] Section 216.015(3) (b), F.S.
[2] http://fcn.state.f.l.us/dms/dbc/mgt/inventory.html
[3] According to the Executive Summary of the 2005 Inventory Annual Report
[4] Suitable leased public facilities include leased public facilities that are solely occupied by state agencies and have at least 2,000 square feet of net floor area in a single room or in a combination of rooms having a minimum of 400 square feet in each room. Section 252.385 (4) (b), F.S.
[5] Section 252.35 (2) (a), F.S.
[6] Section 252.35 (2) (a)2., F.S.

Comprehensive Emergency Management Plan (February 1, 2004 Edition) by citation into its rules. The plan includes, in Appendix VI, the coordination of activities involved with the emergency provision of temporary shelters.[7]

The Division currently manages a program for surveying existing public and private, with written owner agreement, buildings to identify which are appropriately designed and located to serve as shelters.[8] Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or nursing homes, which are suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies.[9]

Proposed changes:

The bill provides that the DMS must compile a list of state-owned facilities that have unoccupied space which are available for use as emergency shelters during an emergency or other catastrophic event. The list must be organized by county and municipality and must be updated by May 31 of each year. The bill defines emergency shelters as "suitable" for use as an emergency shelter if they meet the standards set by the American Red Cross. It defines "unoccupied" as meaning "vacant due to suspended operation or nonuse."

C. SECTION DIRECTORY:

Section 1. Requires the Department of Management Services to maintain a list of state-owned facilities that have unoccupied space to be used as emergency shelters during storms or other catastrophic events.

Section 2. This act shall take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

[7] Rule 9G-2.002, F.A.C.
[8] Section 252.385(2), F.S.
[9] Section 252.385(4)(a), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006 the Domestic Security committee adopted the amendment that requires the DMS to compile a list and update it annually of state-owned facilities that have unoccupied space which are suitable for use as emergency shelters. The amendment defines emergency shelters as "suitable" for use as an emergency shelter, if they meet the standards set by the American Red Cross. It defines "unoccupied" as meaning "vacant due to suspended operation or nonuse." The bill was reported favorably with committee substitute.

CHAMBER ACTION

The Domestic Security Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the use of state facilities as emergency shelters; amending s. 252.385, F.S.; providing for use of certain state facilities as emergency shelters; requiring the Department of Management Services to list state-owned facilities that are suitable for use as emergency shelters; providing requirements with respect to such listing; defining terms; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (4) of section 252.385, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

252.385 Public shelter space.--

(4)(a) Public facilities, including schools, postsecondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or

24 nursing homes, which are suitable for use as public hurricane
25 evacuation shelters shall be made available at the request of
26 the local emergency management agencies. Such agencies shall
27 coordinate with the appropriate school board, university,
28 community college, state agency, or local governing board when
29 requesting the use of such facilities as public hurricane
30 evacuation shelters.
31 (d) The Department of Management Services shall include in
32 the annual state facilities inventory report required under ss.
33 216.015-216.016 a separate list of state-owned facilities,
34 including, but not limited to, meeting halls, auditoriums,
35 conference centers, and training centers that have unoccupied
36 space suitable for use as an emergency shelter during a storm or
37 other catastrophic event. Facilities must be listed by the
38 county and municipality where the facility is located and must
39 be made available in accordance with paragraph (a). As used in
40 this paragraph, the term "suitable for use as an emergency
41 shelter" means meeting the standards set by the American Red
42 Cross for a hurricane evacuation shelter, and the term
43 "unoccupied" means vacant due to suspended operation or nonuse.
44 The list must be updated by May 31 of each year.
45 Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1009 Real Estate Profession Regulation
SPONSOR(S): Cretul; Goodlette
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1816

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation Committee	17 Y, 0 N	Livingston	Liepshutz
2) Civil Justice Committee	6 Y, 0 N	Shaddock	Bond
3) State Administration Appropriations Committee		Rayman	Belcher
4) Commerce Council			
5)			

SUMMARY ANALYSIS

This bill makes a number of changes to the statutes addressing real estate brokers, sales associates and schools. Some of the significant changes are below.

- The bill provides licensure of a real estate broker or sale associate as a professional limited liability company.
- The bill increases the time limit for certification of an applicant from one to two years.
- The bill creates grounds for broker discipline while limiting the time period for the filing of an administrative complaint against a sales associate.
- The bill requires the Department of Business and Professional Regulation to notify a licensee's broker or employer in writing when a formal complaint has been filed.
- The bill removes the "Important Notice" header and warning language about disclosure of confidential information in the required agency disclosure forms.
- The bill repeals the prohibition against charging advance fees for listing real property, except for timeshares, and removes criminal penalties for failure to follow advance fee procedures.

The bill modifies commercial real estate sales and leasing commission liens. The significant changes include: defining "Owner's Net Proceeds;" providing that generally a commission notice expires one year after recording; and providing that leases mentioned in a notice of commercial lien are not a recorded conveyance under the relevant provisions of the marketable record title act.

The Florida Department of Business and Professional Regulation states that it is not possible to estimate the increase in workload but the presumption is that any increase in workload will be minimal and can be handled within existing resources.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- The bill eliminates the restrictions on advance fees or commissions, and eliminates the corresponding misdemeanor offense.

Personal responsibility -- The bill increases the administrative fine that may be imposed on practitioners from $1,000 to $5,000.

Safeguard individual liberty -- This bill eliminates restrictions on advance fees.

B. EFFECT OF PROPOSED CHANGES:

Real Estate Brokers, Sales Associates, and Schools

The general regulation of real estate brokers and salespersons is established under part I of ch. 475, F.S. The Florida Real Estate Commission[1] ("commission") under the Division of Real Estate of the Florida Department of Business and Professional Regulation ("DBPR") administers this program. Regulation is designed to assure the minimal competency of real estate practitioners in order to protect the public from financial harm.

Section 1

Current Law

Several real estate terms are used in chapter 475, F.S., including the following:

- "Broker" is defined as a person who for compensation buys, sells, or leases real property or negotiates the transaction for others. The definition includes a general partner, officer, or director of a partnership or corporation which acts as a broker.
- "Broker associate" means "a person who is qualified to be issued a license as a broker but who operates as a sales associate in the employ of another."
- "Sales associate" means "a person who performs any act specified in the definition of "broker," but who performs such act under the direction, control, or management of another person."
- A broker associate or sales associate may be organized and licensed to operate as a "professional corporation" or a "limited liability company."
- Partnerships, limited liability partnerships, limited liability companies, and corporations that act as a broker must register with the commission. Pursuant to s. 475.15, F.S., the commission requires every partnership to be registered and at least one of its partners to be licensed or registered as an active broker.

[1] "The Florida Real Estate Commission (FREC) consists of seven members and meets monthly in Orlando. The commission meeting is usually the third Wednesday of the month. The FREC administers and enforces the real estate license law, Chapter 475, Part I, Florida Statutes. The Commission is also empowered to pass rules that enable it to implement its statutorily authorized duties and responsibilities." Florida Real Estate Commission (last visited Mar. 20, 2006) <http://www.myflorida.com/dbpr/re/frec_welcome.shtml>.

Effect of Bill

The bill authorizes a professional limited liability company to be licensed as a broker or sales associate.

Section 2

Current Law

Applicants for licensure must meet character and educational requirements, submit to a background check, and pass an examination. The commission is authorized to require satisfactorily completion of one or more approved educational courses before a person may become licensed.

When the commission certifies that a person qualifies to take the licensure examination, the applicant has 1 year to take the examination. If the exam is not taken within that 1 year the licensure expires and a new application process must be completed and approved by the commission.

Effect of Bill

The bill specifies that the application for licensure expires in 2 years if the applicant fails to pass the examination, and the applicant's successful course completion is rendered invalid.

Section 3

Current Law

Section 475.182, F.S., requires the DBPR to adopt rules establishing a renewal of licenses procedure at least every 4 years. The Florida Administrative Code requires that a licensee to biennially renew a license upon application and payment of the renewal fee by the practitioner.[2] The renewal application must include proof that the licensee has, since the issuance or renewal of the license, satisfactorily completed at least 14 classroom hours of continuing education during each license period. Failure to renew before the expiration of the term of the license causes the licensee to be in involuntary inactive status. Any license which has been involuntarily inactive for more than 2 years automatically expires.

Effect of Bill

The bill authorizes a licensee to reactivate a license that has been involuntarily inactive for 12 months or less by completing at least 14 hours of continuing education. A licensee may reactivate a license that has been involuntarily inactive for more than 12 months but fewer than 24 months by completing 28 hours of education courses.

Section 4

Current Law

Section 475.25, F.S., prescribes disciplinary guidelines for violations of the provisions of part I of ch. 475.

Effect of Bill

The bill increases the administrative fine that may be imposed on practitioners from $1,000 to $5,000. The bill creates additional violations if a broker fails to reasonably manage or supervise any broker or sales associate whose license is affiliated with that broker or if a broker has failed to review the

[2] Section 61J1-2.002, F.A.C.

brokerage's trust accounting practices. When a formal complaint is filed against a licensee, the bill requires the DBPR or the commission to notify a licensee's broker or employer.

Section 5

Current Law

The term "agency" describes the legal relationship between two persons when one person, known as the agent, acts on behalf of, or represents, the other person. The term "real estate agency law" (or "agency law") refers to laws regulating the legal relationship between real estate licensees and buyers and sellers of real estate.

A "transaction broker" is a broker who facilitates a brokerage transaction between a buyer and a seller. The transaction broker does not affirmatively represent either the buyer or seller as an agent. A "single agent" is a broker who represents either the buyer or seller but not both in the same transaction.

A real estate licensee may enter into a brokerage relationship as either a transaction broker or as a single agent with potential buyers and sellers. Florida is a "presumption of transaction brokerage" state; s. 475.278(1)(b), F.S., specifies "[i]t shall be presumed that all licensees are operating as transaction brokers unless a single agent or no brokerage relationship is established, in writing, with a customer."

Effect of Bill

The bill deletes language in the disclosure requirements for a transaction broker, single agent, and where there is no brokerage relationship. Also removed is the disclosure that the buyer or seller should not assume that a licensee represents them.

Section 6

Amends s. 475.42, F.S., to correct a cross-reference to conform to changes made by the bill.

Section 7

Current Law

Each person, school, or institution, except approved and accredited colleges, universities, community colleges, and career centers in this state, conducting or teaching any course of study in real estate practice for licensure as a broker or sales associate, or teaches any course designed or represented to enable or assist applicants for licensure to pass examinations is required to obtain a permit from the DBPR.[3] An applicant for a permit to operate a proprietary real estate school, to be a chief administrator of such a school, or to be an instructor at such a school, must meet statutory qualifications for practice set forth in s. 475.17(1), F.S.

Effect of Bill

The bill requires each person, school, or institution to keep registration records, course rosters, attendance records, a file copy of each examination and progress test, and all student answer sheets for a period of at least 3 years. A copy of the classroom course roster of courses that require satisfactory completion of an examination is required to be delivered to the DBPR within 30 days after the course was completed.

[3] The exemption for colleges, universities, community colleges, and career centers is limited to transferable college credit courses offered by such institutions.

Section 8

Current Law

Each broker or sales associate who attempts to negotiate a rental, or who furnishes rental information to a prospective tenant for a fee must provide the prospective tenant with a contract or receipt. The contract or receipt must conform to guidelines so disclosure of material information is effectively disclosed to a prospective tenant.

Effect of Bill

The bill limits the disclosure documents only to brokers or sales associates who provide a rental information "list" to a prospective tenant.

Commercial Real Estate Sales Commission Lien Act

Part III of ch. 475, F.S., is the Commercial Real Estate Sales Commission Lien Act enacted in 2005. The Act addresses various aspects of a broker's lien for a sales commission and describes a closing agent's obligations. The Act provides a sales broker with the power to place a lien on an owner's proceeds from a commercial real estate transaction when there is a dispute over the broker's commission. The proceeds are placed in the registry of the court until the dispute is resolved, but the closing may proceed and the buyer may take clean title to the commercial property.

Section 9

Current Law

Section 475.701, F.S., specifies that the closing agent does not subtract the amount secured by a mortgage or lien that the buyer agrees to remain on the property. However, the buyer will receive credit against the purchase price for the amount of that lien thus reducing the amount to be paid to close. If the closing agent does not also subtract the continuing lien, then the closing agent may be reserving against net proceeds that are not a part of the transaction.

Effect of Bill

The bill provides that, when calculating the owner's net proceeds that are subject to a lien, the closing agent must subtract the amount of all prior liens, not just the ones that are paid off at closing. Also see Section 14.

Section 10

Current Law

Section 475.707, F.S., provides that when there is a dispute over the broker's commission the proceeds are placed in the registry of the court until the dispute is resolved, but the closing may proceed and the buyer may take clean title to the commercial property. A commission notice recorded under this part expires 1 year after the date of recording, unless the brokerage agreement remains effective after the expiration date of the commission notice and the broker records an extension notice.

Effect of Bill

The bill specifies that a commission notice will not expire in 1 year if the owner remains obligated to pay a commission to the broker and deletes reference to the term of the brokerage agreement.

Section 11

Current Law

Current law provides conditions that must be met by the closing agent prior to the release of reserved funds to the broker.

Effect of Bill

The bill amends s. 475.709, F.S., to provide that all of the conditions specified in each of the sections must be met by the closing agent to release the reserved funds to the broker.

Section 12

Current Law

The law provides that a closing agent may initiate legal action to determine the rights of the parties to disputed funds if the owner disputes the release of the reserved proceeds, if the owner and broker have not agreed in writing within 5 days, and if neither the owner nor the broker has initiated a civil action.

Effect of Bill

The bill amends s. 475.711, F.S., to provide that all of the conditions specified must be met before an action seeking adjudication of the rights of the parties to the disputed funds may be filed.

Section 13

Current Law

In civil actions involving commissions, the non-prevailing party is required to pay the costs and reasonable attorney's fees incurred in the action by the prevailing party.[4] However, if a court determines that neither the owner nor the broker is the prevailing party, the costs and attorney's fees of the prevailing party and the closing agent will be divided equally between and paid by the owner and broker.[5]

Effect of Bill

The bill amends s.475.713, F.S., to revise the award of costs and attorney's fees in civil actions over a commission. Specifically, the bill provides that if a court determines that neither the owner nor the broker is the prevailing party, the costs and attorney's fees of the closing agent and the amount of any costs, recording charges, and service charges of the court of court that were deducted from the disputed reserve proceeds will be divided equally between and paid by the owner and broker.

Section 14

Effect of Bill

Amends s.475.715, F.S., to provide, when calculating the owner's net proceeds that are subject to a lien, the closing agent must subtract the amount of all prior liens, not just the ones that are paid off at closing. *Also see* section 9, above.

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[4] Section 475.713(5)(a), F.S.
[5] Section 475.713(5)(b), F.S.

Commercial Real Estate Leasing Commission Lien Act

Part IV of ch. 475, F.S. is the "Commercial Real Estate Leasing Commission Lien Act," and provides a broker in a lease transaction with the power to place a lien on an owner's interest in commercial real estate for any commission earned by a broker under a brokerage agreement. The lien is on the commercial real estate itself. The Act provides legal procedures and requirements for filing a lawsuit to enforce a lien, resolve payment of commission owed, and release parties from liens. These provisions were enacted in 2005.

Section 15

Effect of Bill

Amends s.475.719, F.S., to delete a duplicative reference.

Section 16

Current Law

A lien notice recorded under this part expires 10 years after the date of recording, unless the brokerage agreement remains effective after the expiration date of the commission notice and the broker records an extension notice.

Effect of Bill

The bill specifies that an owner remains obligated to pay a commission to the broker and deletes reference to the term of the brokerage agreement. Moreover, the bill specifies that neither the recording of a broker's lien notice or an extension nor the recording of any lis pendens[6] to foreclose a broker's lien constitutes notice to a creditor or subsequent purchaser of the existence of the lease.

Section 17

Effect of Bill

Amends s. 721.20, F.S., to correct a reference.

Advance Fees

Section 18

Current Law

Section 475.452, F.S., provides the procedures for advance fees collected by a broker in all situations. The commission is authorized to adopt rules to regulate the method of accounting to be used by brokers. The requirements of the section do not apply to real estate brokers who have entered into a written agreement providing how anticipated expenses are to be incurred and paid. The section also provides that anyone who violates the provisions is guilty of a misdemeanor of the first degree.

Effect of Bill

[6] Lis pendens is defined as "[a] notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is the subject matter of litigation, and that any interests acquired during the pendency of the suit are subject to its outcome." Black's Law Dictionary 943 (7th ed. 1999).

Repeals s. 475.452, F.S., relating to the advance fees, the deposit of those fees, and accounting procedures for the fees.

Section 19

Provides an effective date of July 1, 2006.

C. SECTION DIRECTORY:

Section 1. Amends s. 475.161, F.S., to require a professional limited liability company to be licensed as a broker or sales associate.

Section 2. Amends s. 475.181, F.S., dealing with expired licenses.

Section 3. Amends s. 475.183, F.S., regarding reactivation of involuntary inactive licenses.

Section 4. Amends s. 475.25, F.S., by increasing an administrative fine.

Section 5. Amends s. 475.278, F.S., by deleting language in a broker disclosure agreement.

Section 6. Amends s. 475.42, F.S., to correct a cross-reference.

Section 7. Amends s. 475.451, F.S., relating to the retention of broker education records.

Section 8. Amends s. 475.453, F.S., by limiting the disclosure documents only to brokers or sales associates who provide a rental information "list" to a prospective tenant.

Section 9. Amends s. 475.701, F.S., relating to the calculation of an owner's net proceeds.

Section 10. Amends s. 475.707, F.S., relating to the expiration of a commission notice.

Section 11. Amends s. 475.709, F.S., regarding what conditions must be met before a closing agent may release reserved funds.

Section 12. Amends s. 475.711, F.S., to provide that all of the conditions specified must be met in before an action seeking adjudication of the rights of the parties to the disputed funds may be filed.

Section 13. Amends s.475.713, F.S., to correct references.

Section 14. Amends s.475.715, F.S., relating to a closing agent's calculation of an owner's net proceeds.

Section 15. Amends s.475.719, F.S., to delete a duplicative reference.

Section 16. Amends s. 475.807, F.S., regarding an owner's obligation to pay a commission.

Section 17. Amends s. 721.20, F.S., to correct a reference.

Section 18. Repeals s, 475.452, F.S., relating to advance fee accounting procedures.

Section 19. Provides an effective date of July 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill increases the administrative responsibilities for education providers and instructors related to the retention of education documentation. There may be a minimal effect on how certain licensees structure their business entities by allowing the licensure of a limited liability company or professional limited liability company. This would enable certain licensees to take advantage of certain tax benefits available to these business entities. The bill would also enable licensee to take advantage of certain professional protections against liability.

D. FISCAL COMMENTS:

The Florida Department of Business and Professional Regulation projects, "[i]t is not possible to estimate the increase in workload but the presumption is that any increase in workload will be minimal and can be handled within existing resources." The bill would increase the amount of work for the FREC and department operations to perform to relative to continuing education and make it more likely that license holders request formal hearings before an administrative law judge rather than submitting to the enforcement of discipline at informal hearings before the FREC. The broadening of the scope of persons notified of the filing of administrative complaints will increase workload for staff supporting the actions of the FREC.

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 Department of Business and Professional Regulation notes, the bill "may require rule making by the FREC to carry out the additional duties prescribed."

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to real estate profession regulation;
3 amending s. 475.161, F.S.; providing for broker associate
4 or sales associate licensure as a professional limited
5 liability company; amending s. 475.181, F.S.; revising and
6 adding conditions for licensure; amending s. 475.183,
7 F.S.; providing continuing education requirements for
8 certain license renewal; requiring the Florida Real Estate
9 Commission to prescribe certain continuing education
10 courses; amending s. 475.25, F.S.; increasing a maximum
11 disciplinary administrative fine; providing additional
12 grounds for discipline for brokers; providing filing
13 limitations for administrative complaints against sales
14 associates; requiring the Department of Business and
15 Professional Regulation or the commission to provide
16 notification to certain persons upon the department's or
17 commission's filing of a formal complaint against a
18 licensee; amending s. 475.278, F.S.; revising the required
19 information on a transaction broker notice, a single agent
20 notice, and a no brokerage relationship notice; amending
21 s. 475.42, F.S.; removing a cross-reference to conform to
22 changes made by the act; amending s. 475.451, F.S.;
23 requiring schools teaching real estate practice to keep
24 certain records and documents and make them available to
25 the department; requiring certain personnel of schools
26 teaching real estate practice to deliver course rosters to
27 the department by a certain date; specifying the
28 information required in a course roster; amending s.

29 475.453, F.S.; revising a provision relating to rental
30 information given by a broker or sales associate to a
31 prospective tenant; amending s. 475.701, F.S.; revising
32 definitions; amending s. 475.707, F.S.; revising a
33 provision relating to commission notice recording;
34 amending s. 475.709, F.S.; clarifying provisions relating
35 to claim of commission; amending s. 475.711, F.S.;
36 clarifying provisions relating to actions involving
37 disputed reserved proceeds; amending s. 475.713, F.S.;
38 revising the award of costs and attorney's fees in civil
39 actions concerning commission; amending s. 475.715, F.S.;
40 revising the method by which an owner's net proceeds are
41 computed; amending s. 475.719, F.S.; removing an exception
42 from a buyer's broker provision shielding the rights and
43 remedies available to an owner, a buyer, or a buyer's
44 broker; amending s. 475.807, F.S.; revising a provision
45 relating to the recordation of lien notices; providing
46 that the recording of a broker's lien notice or any
47 extension thereof and any lis pendens shall not constitute
48 notice of the existence of any lease; amending s. 721.20,
49 F.S.; removing a cross-reference to conform to changes
50 made by the act; repealing s. 475.452, F.S., relating to
51 advance fees, deposit, accounting, penalty, and damages;
52 providing an effective date.
53
54 Be It Enacted by the Legislature of the State of Florida:
55

56 Section 1. Section 475.161, Florida Statutes, is amended
57 to read:
58 475.161 Licensing of broker associates and sales
59 associates.--The commission shall license a broker associate or
60 sales associate as an individual or, upon the licensee providing
61 the commission with authorization from the Department of State,
62 as a professional corporation, limited liability company, or
63 professional limited liability company. A license shall be
64 issued in the licensee's legal name only and, when appropriate,
65 shall include the entity designation. This section shall not
66 operate to permit a broker associate or sales associate to
67 register or be licensed as a general partner, member, manager,
68 officer, or director of a brokerage firm under s. 475.15.
69 Section 2. Subsection (2) of section 475.181, Florida
70 Statutes, is amended to read:
71 475.181 Licensure.--
72 (2) The commission shall certify for licensure any
73 applicant who satisfies the requirements of ss. 475.17, 475.175,
74 and 475.180. The commission may refuse to certify any applicant
75 who has violated any of the provisions of s. 475.42 or who is
76 subject to discipline under s. 475.25. The application shall
77 expire 2 years ~~1 year~~ after the date received if the applicant
78 does not pass ~~fails to take~~ the appropriate examination.
79 Additionally, if an applicant does not pass the licensing
80 examination within 2 years after the successful course
81 completion date, the applicant's successful course completion is
82 invalid for licensure.

83 Section 3. Subsection (2) of section 475.183, Florida
84 Statutes, is amended to read:
85 475.183 Inactive status.--
86 (2)(a) A licensee may reactivate a license that has been
87 involuntarily inactive for 12 months or less by satisfactorily
88 completing at least 14 hours of a commission-prescribed
89 continuing education course. Notwithstanding the provisions of
90 s. 455.271, a licensee may reactivate a license that has been
91 involuntarily inactive for more than 12 months but fewer than 24
92 months by satisfactorily completing 28 hours of a commission-
93 prescribed education course.
94 (b) Any license that ~~which~~ has been involuntarily inactive
95 for more than 2 years shall automatically expire. Once a license
96 expires, it becomes null and void without any further action by
97 the commission or department. Ninety days prior to expiration of
98 the license, the department shall give notice to the licensee.
99 The commission shall prescribe by rule a fee not to exceed $100
100 for the late renewal of an involuntarily inactive license. The
101 department shall collect the current renewal fee for each
102 renewal period in which the license was involuntarily inactive
103 in addition to any applicable late renewal fee.
104 Section 4. Subsections (1) and (5) of section 475.25,
105 Florida Statutes, are amended, subsection (6) is renumbered as
106 subsection (7), and a new subsection (6) is added to that
107 section, to read:
108 475.25 Discipline.--
109 (1) The commission may deny an application for licensure,
110 registration, or permit, or renewal thereof; may place a

111 licensee, registrant, or permittee on probation; may suspend a
112 license, registration, or permit for a period not exceeding 10
113 years; may revoke a license, registration, or permit; may impose
114 an administrative fine not to exceed $5,000 ~~$1,000~~ for each
115 count or separate offense; and may issue a reprimand, and any or
116 all of the foregoing, if it finds that the licensee, registrant,
117 permittee, or applicant:
118 (a) Has violated any provision of s. 455.227(1) or s.
119 475.42. However, licensees under this part are exempt from the
120 provisions of s. 455.227(1)(i).
121 (b) Has been guilty of fraud, misrepresentation,
122 concealment, false promises, false pretenses, dishonest dealing
123 by trick, scheme, or device, culpable negligence, or breach of
124 trust in any business transaction in this state or any other
125 state, nation, or territory; has violated a duty imposed upon
126 her or him by law or by the terms of a listing contract,
127 written, oral, express, or implied, in a real estate
128 transaction; has aided, assisted, or conspired with any other
129 person engaged in any such misconduct and in furtherance
130 thereof; or has formed an intent, design, or scheme to engage in
131 any such misconduct and committed an overt act in furtherance of
132 such intent, design, or scheme. It is immaterial to the guilt of
133 the licensee that the victim or intended victim of the
134 misconduct has sustained no damage or loss; that the damage or
135 loss has been settled and paid after discovery of the
136 misconduct; or that such victim or intended victim was a
137 customer or a person in confidential relation with the licensee
138 or was an identified member of the general public.

139 (c) Has advertised property or services in a manner which
140 is fraudulent, false, deceptive, or misleading in form or
141 content. The commission may adopt rules defining methods of
142 advertising that violate this paragraph.
143 (d)1. Has failed to account or deliver to any person,
144 including a licensee under this chapter, at the time which has
145 been agreed upon or is required by law or, in the absence of a
146 fixed time, upon demand of the person entitled to such
147 accounting and delivery, any personal property such as money,
148 fund, deposit, check, draft, abstract of title, mortgage,
149 conveyance, lease, or other document or thing of value,
150 including a share of a real estate commission if a civil
151 judgment relating to the practice of the licensee's profession
152 has been obtained against the licensee and said judgment has not
153 been satisfied in accordance with the terms of the judgment
154 within a reasonable time, or any secret or illegal profit, or
155 any divisible share or portion thereof, which has come into the
156 licensee's hands and which is not the licensee's property or
157 which the licensee is not in law or equity entitled to retain
158 under the circumstances. However, if the licensee, in good
159 faith, entertains doubt as to what person is entitled to the
160 accounting and delivery of the escrowed property, or if
161 conflicting demands have been made upon the licensee for the
162 escrowed property, which property she or he still maintains in
163 her or his escrow or trust account, the licensee shall promptly
164 notify the commission of such doubts or conflicting demands and
165 shall promptly:

166 a. Request that the commission issue an escrow
167 disbursement order determining who is entitled to the escrowed
168 property;
169 b. With the consent of all parties, submit the matter to
170 arbitration;
171 c. By interpleader or otherwise, seek adjudication of the
172 matter by a court; or
173 d. With the written consent of all parties, submit the
174 matter to mediation. The department may conduct mediation or may
175 contract with public or private entities for mediation services.
176 However, the mediation process must be successfully completed
177 within 90 days following the last demand or the licensee shall
178 promptly employ one of the other escape procedures contained in
179 this section. Payment for mediation will be as agreed to in
180 writing by the parties. The department may adopt rules to
181 implement this section.
182
183 If the licensee promptly employs one of the escape procedures
184 contained herein and abides by the order or judgment resulting
185 therefrom, no administrative complaint may be filed against the
186 licensee for failure to account for, deliver, or maintain the
187 escrowed property. Under certain circumstances, which the
188 commission shall set forth by rule, a licensee may disburse
189 property from the licensee's escrow account without notifying
190 the commission or employing one of the procedures listed in sub-
191 subparagraphs a.-d. If the buyer of a residential condominium
192 unit delivers to a licensee written notice of the buyer's intent
193 to cancel the contract for sale and purchase, as authorized by

194 s. 718.503, or if the buyer of real property in good faith fails
195 to satisfy the terms in the financing clause of a contract for
196 sale and purchase, the licensee may return the escrowed property
197 to the purchaser without notifying the commission or initiating
198 any of the procedures listed in sub-subparagraphs a.-d.
199 2. Has failed to deposit money in an escrow account when
200 the licensee is the purchaser of real estate under a contract
201 where the contract requires the purchaser to place deposit money
202 in an escrow account to be applied to the purchase price if the
203 sale is consummated.
204 (e) Has violated any of the provisions of this chapter or
205 any lawful order or rule made or issued under the provisions of
206 this chapter or chapter 455.
207 (f) Has been convicted or found guilty of, or entered a
208 plea of nolo contendere to, regardless of adjudication, a crime
209 in any jurisdiction which directly relates to the activities of
210 a licensed broker or sales associate, or involves moral
211 turpitude or fraudulent or dishonest dealing. The record of a
212 conviction certified or authenticated in such form as to be
213 admissible in evidence under the laws of the state shall be
214 admissible as prima facie evidence of such guilt.
215 (g) Has had a broker's or sales associate's license
216 revoked, suspended, or otherwise acted against, or has had an
217 application for such licensure denied, by the real estate
218 licensing agency of another state, territory, or country.
219 (h) Has shared a commission with, or paid a fee or other
220 compensation to, a person not properly licensed as a broker,
221 broker associate, or sales associate under the laws of this

222 state, for the referral of real estate business, clients,
223 prospects, or customers, or for any one or more of the services
224 set forth in s. 475.01(1)(a). For the purposes of this section,
225 it is immaterial that the person to whom such payment or
226 compensation is given made the referral or performed the service
227 from within this state or elsewhere; however, a licensed broker
228 of this state may pay a referral fee or share a real estate
229 brokerage commission with a broker licensed or registered under
230 the laws of a foreign state so long as the foreign broker does
231 not violate any law of this state.
232 (i) Has become temporarily incapacitated from acting as a
233 broker or sales associate with safety to investors or those in a
234 fiduciary relation with her or him because of drunkenness, use
235 of drugs, or temporary mental derangement; but suspension of a
236 license in such a case shall be only for the period of such
237 incapacity.
238 (j) Has rendered an opinion that the title to any property
239 sold is good or merchantable, except when correctly based upon a
240 current opinion of a licensed attorney at law, or has failed to
241 advise a prospective purchaser to consult her or his attorney on
242 the merchantability of the title or to obtain title insurance.
243 (k) Has failed, if a broker, to immediately place, upon
244 receipt, any money, fund, deposit, check, or draft entrusted to
245 her or him by any person dealing with her or him as a broker in
246 escrow with a title company, banking institution, credit union,
247 or savings and loan association located and doing business in
248 this state, or to deposit such funds in a trust or escrow
249 account maintained by her or him with some bank, credit union,

250 or savings and loan association located and doing business in
251 this state, wherein the funds shall be kept until disbursement
252 thereof is properly authorized; or has failed, if a sales
253 associate, to immediately place with her or his registered
254 employer any money, fund, deposit, check, or draft entrusted to
255 her or him by any person dealing with her or him as agent of the
256 registered employer. The commission shall establish rules to
257 provide for records to be maintained by the broker and the
258 manner in which such deposits shall be made. A broker may place
259 and maintain up to $5,000 of personal or brokerage funds in the
260 broker's property management escrow account and up to $1,000 of
261 personal or brokerage funds in the broker's sales escrow
262 account. A broker shall be provided a reasonable amount of time
263 to correct escrow errors if there is no shortage of funds and
264 such errors pose no significant threat to economically harm the
265 public. It is the intent of the Legislature that, in the event
266 of legal proceedings concerning a broker's escrow account, the
267 disbursement of escrowed funds not be delayed due to any dispute
268 over the personal or brokerage funds that may be present in the
269 escrow account.
270 (l) Has made or filed a report or record which the
271 licensee knows to be false, has willfully failed to file a
272 report or record required by state or federal law, has willfully
273 impeded or obstructed such filing, or has induced another person
274 to impede or obstruct such filing; but such reports or records
275 shall include only those which are signed in the capacity of a
276 licensed broker or sales associate.

277 (m) Has obtained a license by means of fraud,
278 misrepresentation, or concealment.
279 (n) Is confined in any county jail, postadjudication; is
280 confined in any state or federal prison or mental institution;
281 is under home confinement ordered in lieu of institutional
282 confinement; or, through mental disease or deterioration, can no
283 longer safely be entrusted to competently deal with the public.
284 (o) Has been found guilty, for a second time, of any
285 misconduct that warrants her or his suspension or has been found
286 guilty of a course of conduct or practices which show that she
287 or he is so incompetent, negligent, dishonest, or untruthful
288 that the money, property, transactions, and rights of investors,
289 or those with whom she or he may sustain a confidential
290 relation, may not safely be entrusted to her or him.
291 (p) Has failed to inform the commission in writing within
292 30 days after pleading guilty or nolo contendere to, or being
293 convicted or found guilty of, any felony.
294 (q) Has violated any provision of s. 475.2755 or s.
295 475.278, including the duties owed under those sections.
296 (r) Has failed in any written listing agreement to include
297 a definite expiration date, description of the property, price
298 and terms, fee or commission, and a proper signature of the
299 principal(s); and has failed to give the principal(s) a legible,
300 signed, true and correct copy of the listing agreement within 24
301 hours of obtaining the written listing agreement. The written
302 listing agreement shall contain no provision requiring the
303 person signing the listing to notify the broker of the intention
304 to cancel the listing after such definite expiration date.

305 (s) Has had a registration suspended, revoked, or
306 otherwise acted against in any jurisdiction. The record of the
307 disciplinary action certified or authenticated in such form as
308 to be admissible in evidence under the laws of the state shall
309 be admissible as prima facie evidence of such disciplinary
310 action.
311 (t) Has violated any standard for the development or
312 communication of a real estate appraisal or other provision of
313 the Uniform Standards of Professional Appraisal Practice, as
314 defined in s. 475.611, as approved and adopted by the Appraisal
315 Standards Board of the Appraisal Foundation, as defined in s.
316 475.611. This paragraph does not apply to a real estate broker
317 or sales associate who, in the ordinary course of business,
318 performs a comparative market analysis, gives a broker price
319 opinion, or gives an opinion of value of real estate. However,
320 in no event may this comparative market analysis, broker price
321 opinion, or opinion of value of real estate be referred to as an
322 appraisal, as defined in s. 475.611.
323 (u) Has failed, if a broker, to reasonably manage or
324 supervise any broker associate or sales associate whose license
325 is affiliated with such broker.
326 (v) Has failed, if a broker, to review the brokerage's
327 trust accounting practices in order to ensure compliance with
328 this chapter.
329 (5) An administrative complaint against a broker, ~~or~~
330 broker associate, or sales associate shall ~~must~~ be filed within
331 5 years after the time of the act giving rise to the complaint

332 or within 5 years after the time the act is discovered or should
333 have been discovered with the exercise of due diligence.
334 (6) The department shall promptly notify a licensee's
335 broker or employer, as defined in this part, in writing any time
336 the department files a formal complaint against a licensee. The
337 notice required in this subsection shall be provided by the
338 commission in those instances where the commission files a
339 formal complaint against a licensee.
340 (7) ~~(6)~~ The commission shall promptly report to the proper
341 prosecuting authority any criminal violation of any statute
342 relating to the practice of a real estate profession regulated
343 by the commission.
344 Section 5. Paragraph (c) of subsection (2), paragraph (c)
345 of subsection (3), and paragraph (c) of subsection (4) of
346 section 475.278, Florida Statutes, are amended to read:
347 475.278 Authorized brokerage relationships; presumption of
348 transaction brokerage; required disclosures.--
349 (2) TRANSACTION BROKER RELATIONSHIP.--
350 (c) Contents of disclosure.--The required notice given
351 under paragraph (b) must include the following information in
352 the following form:
353
354 ~~IMPORTANT NOTICE~~
355
356 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~
357 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~
358

359 ~~You should not assume that any real estate broker or sales~~
360 ~~associate represents you unless you agree to engage a real~~
361 ~~estate licensee in an authorized brokerage relationship, either~~
362 ~~as a single agent or as a transaction broker. You are advised~~
363 ~~not to disclose any information you want to be held in~~
364 ~~confidence until you make a decision on representation.~~
365
366 TRANSACTION BROKER NOTICE
367
368 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS~~
369 ~~TRANSACTION BROKERS DISCLOSE TO BUYERS AND SELLERS THEIR ROLE~~
370 ~~AND DUTIES IN PROVIDING A LIMITED FORM OF REPRESENTATION.~~
371
372 As a transaction broker, (insert name of Real Estate Firm and
373 its Associates) , provides to you a limited form of
374 representation that includes the following duties:
375 1. Dealing honestly and fairly;
376 2. Accounting for all funds;
377 3. Using skill, care, and diligence in the transaction;
378 4. Disclosing all known facts that materially affect the
379 value of residential real property and are not readily
380 observable to the buyer;
381 5. Presenting all offers and counteroffers in a timely
382 manner, unless a party has previously directed the licensee
383 otherwise in writing;
384 6. Limited confidentiality, unless waived in writing by a
385 party. This limited confidentiality will prevent disclosure that
386 the seller will accept a price less than the asking or listed

387 price, that the buyer will pay a price greater than the price
388 submitted in a written offer, of the motivation of any party for
389 selling or buying property, that a seller or buyer will agree to
390 financing terms other than those offered, or of any other
391 information requested by a party to remain confidential; and
392 7. Any additional duties that are entered into by this or
393 by separate written agreement.
394
395 Limited representation means that a buyer or seller is not
396 responsible for the acts of the licensee. Additionally, parties
397 are giving up their rights to the undivided loyalty of the
398 licensee. This aspect of limited representation allows a
399 licensee to facilitate a real estate transaction by assisting
400 both the buyer and the seller, but a licensee will not work to
401 represent one party to the detriment of the other party when
402 acting as a transaction broker to both parties.
403

_____ _____

Date Signature

404

_____

Signature

405
406 This paragraph expires July 1, 2008.
407 (3) SINGLE AGENT RELATIONSHIP.--
408 (c) Contents of disclosure.--

409 1. Single agent duties disclosure.--The notice required
410 under subparagraph (b)1. must include the following information
411 in the following form:
412
413 ~~IMPORTANT NOTICE~~
414
415 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~
416 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~
417
418 ~~You should not assume that any real estate broker or sales~~
419 ~~associate represents you unless you agree to engage a real~~
420 ~~estate licensee in an authorized brokerage relationship, either~~
421 ~~as a single agent or as a transaction broker. You are advised~~
422 ~~not to disclose any information you want to be held in~~
423 ~~confidence until you make a decision on representation.~~
424
425 SINGLE AGENT NOTICE
426
427 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES OPERATING AS
428 SINGLE AGENTS DISCLOSE TO BUYERS AND SELLERS THEIR DUTIES.
429
430 As a single agent, (insert name of Real Estate Entity and
431 its Associates) owe to you the following duties:
432 1. Dealing honestly and fairly;
433 2. Loyalty;
434 3. Confidentiality;
435 4. Obedience;
436 5. Full disclosure;

437 6. Accounting for all funds;
438 7. Skill, care, and diligence in the transaction;
439 8. Presenting all offers and counteroffers in a timely
440 manner, unless a party has previously directed the licensee
441 otherwise in writing; and
442 9. Disclosing all known facts that materially affect the
443 value of residential real property and are not readily
444 observable.
445

_____ _____

Date Signature

446
447 2. Transition disclosure.--To gain the principal's written
448 consent to a change in relationship, a licensee must use the
449 following disclosure:
450
451 CONSENT TO TRANSITION TO
452 TRANSACTION BROKER
453
454 FLORIDA LAW ALLOWS REAL ESTATE LICENSEES WHO REPRESENT A BUYER
455 OR SELLER AS A SINGLE AGENT TO CHANGE FROM A SINGLE AGENT
456 RELATIONSHIP TO A TRANSACTION BROKERAGE RELATIONSHIP IN ORDER
457 FOR THE LICENSEE TO ASSIST BOTH PARTIES IN A REAL ESTATE
458 TRANSACTION BY PROVIDING A LIMITED FORM OF REPRESENTATION TO
459 BOTH THE BUYER AND THE SELLER. THIS CHANGE IN RELATIONSHIP
460 CANNOT OCCUR WITHOUT YOUR PRIOR WRITTEN CONSENT.
461

462 As a transaction broker, (insert name of Real Estate Firm and
463 its Associates) , provides to you a limited form of
464 representation that includes the following duties:
465 1. Dealing honestly and fairly;
466 2. Accounting for all funds;
467 3. Using skill, care, and diligence in the transaction;
468 4. Disclosing all known facts that materially affect the
469 value of residential real property and are not readily
470 observable to the buyer;
471 5. Presenting all offers and counteroffers in a timely
472 manner, unless a party has previously directed the licensee
473 otherwise in writing;
474 6. Limited confidentiality, unless waived in writing by a
475 party. This limited confidentiality will prevent disclosure that
476 the seller will accept a price less than the asking or listed
477 price, that the buyer will pay a price greater than the price
478 submitted in a written offer, of the motivation of any party for
479 selling or buying property, that a seller or buyer will agree to
480 financing terms other than those offered, or of any other
481 information requested by a party to remain confidential; and
482 7. Any additional duties that are entered into by this or
483 by separate written agreement.
484
485 Limited representation means that a buyer or seller is not
486 responsible for the acts of the licensee. Additionally, parties
487 are giving up their rights to the undivided loyalty of the
488 licensee. This aspect of limited representation allows a
489 licensee to facilitate a real estate transaction by assisting

490 both the buyer and the seller, but a licensee will not work to
491 represent one party to the detriment of the other party when
492 acting as a transaction broker to both parties.
493
494 _____I agree that my agent may assume the role
495 and duties of a transaction broker. [must be initialed or
496 signed]
497 (4) NO BROKERAGE RELATIONSHIP.--
498 (c) Contents of disclosure.--The notice required under
499 paragraph (b) must include the following information in the
500 following form:
501
502 ~~IMPORTANT NOTICE~~
503
504 ~~FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES PROVIDE THIS~~
505 ~~NOTICE TO POTENTIAL SELLERS AND BUYERS OF REAL ESTATE.~~
506
507 ~~You should not assume that any real estate broker or sales~~
508 ~~associate represents you unless you agree to engage a real~~
509 ~~estate licensee in an authorized brokerage relationship, either~~
510 ~~as a single agent or as a transaction broker. You are advised~~
511 ~~not to disclose any information you want to be held in~~
512 ~~confidence until you decide on representation.~~
513
514 NO BROKERAGE RELATIONSHIP NOTICE
515

516 FLORIDA LAW REQUIRES THAT REAL ESTATE LICENSEES WHO HAVE NO
517 BROKERAGE RELATIONSHIP WITH A POTENTIAL SELLER OR BUYER DISCLOSE
518 THEIR DUTIES TO SELLERS AND BUYERS.
519
520 As a real estate licensee who has no brokerage relationship
521 with you, (insert name of Real Estate Entity and its
522 Associates) owe to you the following duties:
523
524 1. Dealing honestly and fairly;
525 2. Disclosing all known facts that materially affect the
526 value of residential real property which are not readily
527 observable to the buyer.
528 3. Accounting for all funds entrusted to the licensee.
529
530 (Date) (Signature)
531
532 Section 6. Paragraph (n) of subsection (1) of section
533 475.42, Florida Statutes, is amended to read:
534 475.42 Violations and penalties.--
535 (1) VIOLATIONS.--
536 (n) A broker or sales associate may not enter into any
537 listing or other agreement regarding her or his services in
538 connection with the resale of a timeshare period unless the
539 broker or sales associate fully and fairly discloses all
540 material aspects of the agreement to the owner of the timeshare
541 period ~~and fully complies with the provisions of s. 475.452~~.
542 Further, a broker or sales associate may not use any form of
543 contract or purchase and sale agreement in connection with the

544 resale of a timeshare period unless the contract or purchase and
545 sale agreement fully and fairly discloses all material aspects
546 of the timeshare plan and the rights and obligations of both
547 buyer and seller. The commission is authorized to adopt rules
548 pursuant to chapter 120 as necessary to implement, enforce, and
549 interpret this paragraph.
550 Section 7. Subsections (8) and (9) are added to section
551 475.451, Florida Statutes, to read:
552 475.451 Schools teaching real estate practice.--
553 (8) Beginning October 1, 2006, each person, school, or
554 institution permitted under this section is required to keep
555 registration records, course rosters, attendance records, a file
556 copy of each examination and progress test, and all student
557 answer sheets for a period of at least 3 years subsequent to the
558 beginning of each course and make them available to the
559 department for inspection and copying upon request.
560 (9)(a) Each school permitholder of a proprietary real
561 estate school, each chief administrative person of such an
562 institution, or each course sponsor shall deliver to the
563 department, in a format acceptable to the department, a copy of
564 the classroom course roster of courses that require satisfactory
565 completion of an examination no later than 30 days beyond the
566 end of the calendar month in which the course was completed.
567 (b) The course roster shall consist of the institution or
568 school name and permit number, if applicable, the instructor's
569 name and permit number, if applicable, course title, beginning
570 and ending dates of the course, number of course hours, course
571 location, if applicable, each student's full name and license

572 number, if applicable, each student's mailing address, and the
573 numerical grade each student achieved. The course roster shall
574 also include the signature of the school permitholder, the chief
575 administrative person, or the course sponsor.
576 Section 8. Subsection (1) of section 475.453, Florida
577 Statutes, is amended to read:
578 475.453 Rental information; contract or receipt; refund;
579 penalty.--
580 (1) Each broker or sales associate who ~~attempts to~~
581 ~~negotiate a rental, or who~~ furnishes a rental information list
582 to a prospective tenant, for a fee paid by the prospective
583 tenant, shall provide such prospective tenant with a contract or
584 receipt, which contract or receipt contains a provision for the
585 repayment of any amount over 25 percent of the fee to the
586 prospective tenant if the prospective tenant does not obtain a
587 rental. If the rental information list provided by the broker or
588 sales associate to a prospective tenant is not current or
589 accurate in any material respect, the full fee shall be repaid
590 to the prospective tenant upon demand. A demand from the
591 prospective tenant for the return of the fee, or any part
592 thereof, shall be made within 30 days following the day on which
593 the real estate broker or sales associate has contracted to
594 perform services to the prospective tenant. The contract or
595 receipt shall also conform to the guidelines adopted by the
596 commission in order to effect disclosure of material information
597 regarding the service to be provided to the prospective tenant.
598 Section 9. Subsections (10) and (12) of section 475.701,
599 Florida Statutes, are amended to read:

600 475.701 Definitions.--As used in this part:
601 (10) "Disputed reserved proceeds" means the portion of the
602 owner's net proceeds reserved by a closing agent under s.
603 475.709 that the owner disputes the broker's right to receive
604 ~~such reserved proceeds~~ under s. 475.709(5).
605 (12) "Owner's net proceeds" means the gross sales proceeds
606 that the owner is entitled to receive from the disposition of
607 any commercial real estate specified in a brokerage agreement,
608 less all of the following:
609 (a) The amount of ~~Any~~ money secured by ~~that is required to~~
610 ~~pay~~ any encumbrance, claim, or lien that has priority over the
611 recorded commission notice as provided in s. 475.715 ~~other than~~
612 ~~an encumbrance, claim, or lien that the buyer of the commercial~~
613 ~~real estate authorizes to remain after the disposition~~.
614 (b) Any costs incurred by the owner to close the
615 disposition, including, but not limited to, real estate transfer
616 tax, title insurance premiums, ad valorem taxes and assessments,
617 and escrow fees payable by the owner pursuant to an agreement
618 with the buyer.
619 Section 10. Subsection (3) of section 475.707, Florida
620 Statutes, is amended to read:
621 475.707 Recording commission notice; effectiveness.--
622 (3) A commission notice recorded under this part expires 1
623 year after the date of recording, unless the owner remains
624 obligated to pay a commission to the broker ~~brokerage agreement~~
625 ~~remains effective~~ after the expiration date of the commission
626 notice and the broker records an extension notice in the same
627 public records within the last 60 days before such expiration

628 date. An extension notice shall refer to the recording
629 information of the original commission notice, shall state that
630 the owner remains obligated to pay a commission to the broker
631 ~~brokerage agreement remains effective~~, and shall include the
632 information and be executed in the manner as required by s.
633 475.705(1) for the original commission notice. A timely recorded
634 extension notice shall extend the expiration date of the
635 original recorded commission notice by 1 additional year.
636 Successive extension notices may be recorded for so long as the
637 owner remains obligated to pay a commission to the broker
638 ~~brokerage agreement remains effective between the broker and the~~
639 ~~owner~~. Within 10 days after recording an extension notice, the
640 broker shall deliver a copy thereof to the owner.
641 Section 11. Subsection (6) of section 475.709, Florida
642 Statutes, is amended to read:
643 475.709 Duties of closing agent; reservation of owner's
644 net proceeds.--
645 (6) The commission claimed in the commission notice shall
646 be deemed confirmed by the owner, and the closing agent shall
647 release the reserved proceeds to the broker, if the closing
648 agent is required pursuant to subsection (1) to reserve any or
649 all of the owner's net proceeds~~,~~ and if all of the following
650 conditions have been met:
651 (a) Five days have passed after the closing.
652 (b) The owner has neither confirmed nor disputed the
653 claimed commission to the closing agent.

654 (c) The closing agent receives reasonably satisfactory
655 evidence that the broker delivered a copy of the commission
656 notice to the owner in accordance with s. 475.705.
657 Section 12. Subsection (1) of section 475.711, Florida
658 Statutes, is amended to read:
659 475.711 Interpleader or other proceedings; deposit of
660 reserved proceeds in court registry; discharge of closing agent
661 from further liability.--
662 (1) The closing agent shall, by interpleader action or
663 other legal proceeding, seek adjudication of the rights of the
664 parties with respect to disputed reserved proceeds by the county
665 court or circuit court, whichever may have jurisdiction of
666 controversies in the amount of the disputed reserved proceeds,
667 in a county where all or a portion of the commercial real estate
668 is located if, after the closing of a transaction for the
669 disposition of the commercial real estate, all of the following
670 conditions are met:
671 (a) The closing agent has reserved all or a portion of the
672 owner's net proceeds pursuant to s. 475.709 and the owner
673 disputes the release to the broker of all or any portion of the
674 reserved proceeds.
675 (b) The owner and the broker have not agreed in writing,
676 within 5 days after the closing, regarding the closing agent's
677 release of the disputed reserved proceeds.
678 (c) Neither the owner nor the broker have commenced a
679 civil action to determine the rights of the parties with respect
680 to the disputed reserved proceeds.

681 Section 13. Subsection (5) of section 475.713, Florida
682 Statutes, is amended to read:
683 475.713 Civil action concerning commission; order to show
684 cause; hearing; release of proceeds; award of costs and
685 attorney's fees.--
686 (5)(a) In a civil action commenced by the owner or the
687 broker under this section or in an interpleader action or other
688 proceeding commenced by the closing agent under s. 475.711, the
689 owner or the broker that is not the prevailing party shall be
690 required to pay:
691 1. The costs and reasonable attorney's fees incurred in
692 the action by the prevailing party.
693 2. The costs and reasonable attorney's fees incurred in
694 the action by the closing agent.
695 3. The amount of any costs, recording charges, and service
696 charges of the clerk of court that were deducted from the
697 disputed reserved proceeds under s. 475.711(2) in determining
698 the net amount thereof deposited into the registry of the court.
699 (b) If the court determines that neither the owner nor the
700 broker is the prevailing party, the amounts set forth in
701 subparagraphs (a)2.~~1.~~ and 3.~~2.~~ shall be divided equally between
702 and paid by the owner and the broker.
703 Section 14. Section 475.715, Florida Statutes, is amended
704 to read:
705 475.715 Priority of recorded commission notice.--All
706 statutory liens, consensual liens, mortgages, deeds of trust,
707 assignments of rents, and other encumbrances, including all
708 advances or charges made or accruing thereunder, whether

709 voluntary or obligatory, and all modifications, extensions,
710 renewals, and replacements thereof, recorded prior to the
711 recording of a commission notice pursuant to the provisions of
712 s. 475.707, have priority over the commission notice. The
713 closing agent shall compute the owner's net proceeds by
714 subtracting from the gross sales proceeds~~, and~~ the amount
715 required to discharge any such prior recorded lien and the
716 amount of money secured by any such prior recorded lien that
717 ~~liens shall be subtracted from gross sales proceeds in computing~~
718 ~~the owner's net proceeds unless~~ the buyer permits ~~the same~~ to
719 remain a lien against the title to the commercial real estate. A
720 prior recorded lien includes, without limitation, a valid
721 construction lien claim that is recorded after the recording of
722 the broker's commission notice but which relates back to a
723 notice of commencement recorded under s. 713.13 prior to the
724 recording date of the broker's commission notice.
725 Section 15. Subsection (3) of section 475.719, Florida
726 Statutes, is amended to read:
727 475.719 Buyer's broker.--As used in this section, the term
728 "buyer's broker" means a broker that is entitled to receive
729 payment from the buyer of commercial real estate of any fee or
730 other compensation for licensed services, as specified in a
731 written contract made between the buyer and the broker on or
732 after the effective date of this act relating to the buyer's
733 purchase of the commercial real estate.
734 (3) No such notice given by the buyer's broker pursuant to
735 subsection (2) shall constitute a tortious interference with the
736 sale or disposition or financing of the commercial real estate~~,~~

737 ~~except this section shall not affect the rights and remedies~~
738 ~~otherwise available to the owner, the buyer, or the buyer's~~
739 ~~broker under other applicable law~~.
740 Section 16. Paragraph (b) of subsection (8) of section
741 475.807, Florida Statutes, is amended, and subsection (9) is
742 added to that section, to read:
743 475.807 Recording lien notice; effectiveness.--
744 (8)
745 (b) To the extent that a lien notice recorded by a broker
746 under this part claims an automatic renewal commission that is
747 earned but not then payable, the lien notice expires 10 years
748 after the date of recording, unless within that time the broker
749 commences an action to foreclose the lien under s. 475.809 and
750 records a notice of lis pendens in the public records of the
751 county where the lien notice was recorded. If the owner remains
752 obligated to pay a commission to the broker ~~brokerage agreement~~
753 ~~remains effective~~, the broker may extend the expiration date of
754 a lien notice for an automatic renewal commission by recording
755 an extension notice in the same public records within the last 6
756 months before such expiration date. An extension notice shall
757 refer to the recording information of the original lien notice,
758 shall state that the owner remains obligated to pay a commission
759 to the broker ~~brokerage agreement remains effective~~, and shall
760 include the same information and be executed in the same manner
761 as required by s. 475.805(1) for the original lien notice. A
762 timely recorded extension notice shall extend the expiration
763 date of the original recorded lien notice by 10 additional
764 years. Successive extension notices may be recorded for so long

765 as the owner remains obligated to pay a commission to the broker
766 ~~brokerage agreement remains effective between the broker and the~~
767 ~~owner~~. Within 10 days after recording an extension notice, the
768 broker shall deliver a copy thereof to the owner.
769 (9) Neither the recording of a broker's lien notice or any
770 extension thereof nor the recording of any lis pendens to
771 foreclose a broker's lien thereunder shall constitute notice to
772 any creditor or subsequent purchaser pursuant to s. 695.01 or
773 chapter 712 of the existence of any lease described in the lien
774 notice, extension notice, or lis pendens.
775 Section 17. Subsection (6) of section 721.20, Florida
776 Statutes, is amended to read:
777 721.20 Licensing requirements; suspension or revocation of
778 license; exceptions to applicability; collection of advance fees
779 for listings unlawful.--
780 (6) ~~Notwithstanding the provisions of s. 475.452,~~ It is
781 unlawful for any real estate broker, broker associate, or sales
782 associate to collect any advance fee for the listing of any
783 timeshare estate or timeshare license.
784 Section 18. Section 475.452, Florida Statutes, is
785 repealed.
786 Section 19. This act shall take effect July 1, 2006.

HB 1091

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1091 Insurer Insolvency
SPONSOR(S): Ambler and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2130

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	14 Y, 0 N	Tinney	Cooper
2) Local Government Council	6 Y, 0 N	Camechis	Hamby
3) State Administration Appropriations Committee		Rayman	Belcher
4) Commerce Council			
5)			

SUMMARY ANALYSIS

When an insurer faces financial difficulties or insolvency, the Division of Rehabilitation and Liquidation of the Department of Financial Services (DFS) intervenes to protect the affected insurer's policyholders. The bill amends the law to eliminate the need for an affected policyholder to file a "proof of claim" form before receiving a refund of unearned premium or a claim settlement from the Florida Insurance Guaranty Association (FIGA). Instead, the Department of Financial Services (DFS) is authorized to certify and remit policyholder information for refunds or claims directly to FIGA

In addition to the consumer protections afforded by the Division of Rehabilitation and Liquidation, Florida operates several insurance guaranty funds to ensure that policyholders are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. The Florida Insurance Guaranty Association (FIGA) is responsible for many lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

Funds available to FIGA are the result of an annual assessment of up to 2 percent of each specified insurer's net direct written premiums for the previous year. In 2005, a 2 percent assessment on each insurer's 2004 net direct written premiums would have yielded approximately $200 million had the maximum amount been assessed, however, there was no assessment to FIGA members either in 2003, 2004, or 2005.

On August 24, 1992, Hurricane Andrew devastated much of Dade County. By December 1992, six insurers were declared insolvent due to their inability to settle claims received following Hurricane Andrew. The Legislature met in special session in December 1992 to consider remedies for affected homeowners whose insurers were unable to pay valid claims.

Chapter 92-345, Laws of Florida (LOF) resulted from the December 1992 special legislative session. Under the law, the city of Homestead was authorized to issue municipal revenue bonds to fund FIGA obligations resulting from the multiple insolvencies that resulted from Hurricane Andrew claims. The revenue bonds issued by the city of Homestead did not pledge any assets or taxing authority of Homestead. Rather, the Legislature authorized FIGA to charge its members a special 2 percent assessment in addition to the regular assessment of up to 2 percent. The additional assessment served as the revenue stream pledged to retire the bonds issued by Homestead.

Under the bill, FIGA is authorized to contract with a city or county, or a combination thereof to issue tax-exempt revenue bonds for hurricane recovery. The provisions of the bill closely follow the law enacted by the 1992 Legislature to enable FIGA to pay the hurricane-related claims of insurers who became insolvent following Hurricane Andrew. As in 1993, FIGA will guarantee the tax-exempt bonds through the imposition of an emergency assessment of up to 2 percent in addition to the regular FIGA assessment. The guaranty association is authorized to charge the emergency assessment for the life of the bonds.

There does not appear to be an immediate fiscal impact to the state from the provisions in the bill.

Provides that the bill shall take effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower Families and Maintain Public Security—The bill ensures that FIGA will have funds sufficient to settle the claims and refund unearned premium to a policyholder whose insurer becomes insolvent following hurricane damage in the state. Following the damage caused by the hurricanes that struck Florida in 2004 and 2005, it has become clear that Florida citizens and their communities are well-served by quick and efficient claim settlement by insurers.

B. EFFECT OF PROPOSED CHANGES:

Background

In Florida, regulation of the insurance industry is shared by the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR). The state's Chief Financial Officer (CFO) heads DFS while the head of OIR is the Governor and Cabinet members sitting as the Financial Services Commission. Generally, OIR is responsible for granting a certificate of authority or license to an insurer. A domestic insurer, i.e., an insurer based in Florida, must possess a certificate of authority in order to conduct business in Florida. The regulation and licensure of insurance agents and agencies is the purview of DFS. Staff of DFS also provides consumer information and assistance through the Division of Consumer Services. When an insurer faces financial difficulties or insolvency, the Division of Rehabilitation and Liquidation of DFS intervenes to protect the affected insurer's policyholders.

Chapter 631, F.S., relates to insurer insolvency and guaranty payments and governs the receivership process for insurance companies in Florida. Federal law specifies that insurance companies cannot file for bankruptcy. Instead, they are either "rehabilitated" or "liquidated" by the Division of Rehabilitation and Liquidation (the Division) of DFS.

By law, a delinquency proceeding is initiated by the Division against any insurer believed to be insolvent or experiencing an impairment of its capital reserves or surplus. A delinquency proceeding may include liquidation, rehabilitation, reorganization, or conservancy. Staff of the Division indicates that rehabilitation and liquidation are the two most common delinquency proceedings. By law, the Division of Rehabilitation and Liquidation files all delinquency proceedings in the Circuit Court in Leon County.

Insurance Guaranty Funds: General Information

In addition to the consumer protections afforded by the Division of Rehabilitation and Liquidation, Florida operates several insurance guaranty funds to ensure that policyholders are protected with respect to insurance premiums paid and settlement of outstanding claims, up to limits provided by law. A guaranty association generally is a not-for-profit corporation created by law directed to protect policyholders from financial losses and delays in claim payment and settlement due to the insolvency of an insurance carrier. A guaranty association accomplishes its mission by assuming responsibility for settling claims and refunding unearned premiums to policyholders. The term "unearned premium" refers to that portion of a premium that is paid in advance, typically for 6 months or 1 year, and which is still owed on the unexpired portion of the policy.

Florida's guaranty associations are comprised of insurer representatives. Insurers are required by law to participate in guaranty associations as a condition for transacting business in the state. Monies available through a guaranty association for claims settlement and premium refunds are paid by insurers as a percentage of their total collected premiums. The percentage of premiums payable to a guaranty association is determined by law, although nationally it typically ranges from 1-3 percent. In

many cases, a guaranty association also is authorized by law to assess an additional amount if an emergency arises and the association lacks sufficient funds to pay outstanding claims and to refund unearned premiums. This means, in essence, that insurers licensed to transact insurance in a state assess or tax their respective premium income streams to pay the outstanding claims and unearned premiums of an insolvent insurer.

Most states, including Florida, have more than one insurance guaranty association. Each association is assigned by law to pay outstanding claims and unearned premium, up to limits specified by law, for specific lines of insurance. In Florida, there are four guaranty associations created in chapter 631, F.S. The Florida Life and Health Insurance Guaranty Association generally is responsible for claims settlement and premium refunds for health and life insurers who are insolvent. The Florida Health Maintenance Organization Consumer Assistance Plan offers assistance to members of an insolvent HMO and the Florida Workers' Compensation Insurance Guaranty Association is directed by law to protect policyholders of workers' compensation insurance. The fourth guaranty association is the Florida Insurance Guaranty Association (FIGA). It is responsible for most remaining lines of insurance, including residential and commercial property, automobile insurance, and liability insurance, among others.

The Florida Insurance Guaranty Association (FIGA)

Provisions relating to FIGA, which was created in 1970, are contained in part II of chapter 631, F.S. The board of directors for FIGA is directed by law to be comprised of at least five, and no more than nine members; members serve on the FIGA board for a 4-year term. According to the FIGA website www.figafacts.com, the current FIGA board includes eight members, including one representative each of Nationwide, Allstate, State Farm, and The Hartford, among others.

The law directs FIGA to pay any eligible claim of more than $100 and less than $300,000, less any applicable deductible, with a few specified exceptions (s. 631.57, F.S.) Funds available to FIGA are the result of an annual assessment of up to 2 percent of each specified insurer's net direct written premiums for the previous year. In 2004, a 2 percent assessment on each insurer's 2003 net direct written premiums would have yielded approximately $188 million had the maximum amount been assessed; however, there was no assessment to FIGA members either in 2003 or 2004. Other monies that accrue to FIGA include receivership payments from DFS and from the agencies that liquidate the estates of insolvent insurers in other states.

The law creates three accounts under FIGA:

- auto liability account;
- auto physical damage account; and
- an account for all other included insurance lines (the all-other account).

The last FIGA assessments occurred in 2002. According to documents provided by FIGA, in December 2002, member insurers writing policies covered by the auto liability account were assessed 1.125 percent of their net direct premiums collected in 2001. Similarly, FIGA made an assessment for the auto physical damage account in 2002, as well, although that assessment was for .75 percent. There was no assessment in 2002 for the all-other account. According to FIGA, it has assessed the maximum of 2 percent only once in the past 11 years. The maximum assessment was levied in 1993, only for the all-other account, after more than six insurers were declared insolvent in the first several months following Hurricane Andrew. The law, at s. 631.56(2)(d), F.S., prohibits the use of any state funds by FIGA to settle claims and return unearned premiums.

The law authorizes insurers to include the cost of their annual FIGA assessment in their rate schedule. This means an insurer may recoup its assessment through increasing its policy rates, subject to OIR approval. Generally, however, a guaranty association assessment is one of many factors an insurer considers in setting its rates.

Changes Proposed by the Bill: Guaranty Associations

Under current law in s. 631.181, F.S., a policyholder whose insurer becomes insolvent must file a "proof of claim" form with the Division of Rehabilitation and Liquidation before refund of unearned premiums may be returned to the policyholder or before an outstanding claim may be settled. According to the division, the records and files of many insolvent insurers are complete and the division is able to determine what amounts are owed to policyholders. In many cases, policyholder information may be complete in electronic format; this means the division could certify the names and amounts due to policyholders by electronic data transfer, if such certification were permissible by law.

The bill will allow the Division of Rehabilitation and Liquidation to certify to FIGA, based upon complete records of the insurer, the names of policyholders and the amount of unearned premium due to each. The division and FIGA may determine the best format for transfer of information relating to an insolvent insurer.

Background

Local Government Revenue Bonds

Article VII of the Florida Constitution governs finance and taxation by the state and its political subdivisions. In that article, the state and its political subdivisions, including municipalities and counties, are authorized to issue bonds. In most cases, bonds issued either by a city or a county are tax exempt. The tax-exempt status generally makes bonds issued by governmental entities an attractive investment instrument.

FIGA as Bond Guarantor after Hurricane Andrew

On August 24, 1992, Hurricane Andrew devastated much of Dade County. By December 1992, six insurers were declared insolvent due to their inability to settle claims received following Hurricane Andrew. The Legislature met in special session in December 1992 to consider remedies for affected homeowners whose insurers were unable to pay valid claims.

Chapter 92-345, Laws of Florida (LOF) resulted from the December 1992 special legislative session. Under the law, the city of Homestead was authorized to issue municipal revenue bonds to fund FIGA obligations resulting from the multiple insolvencies that resulted from Hurricane Andrew claims. The revenue bonds issued by the city of Homestead did not pledge any assets or taxing authority of Homestead. Rather, the Legislature authorized FIGA to charge its members a special 2 percent assessment in addition to the regular assessment of up to 2 percent. The additional assessment served as the revenue stream pledged to retire the bonds issued by Homestead. Beginning in 1993, FIGA members were assessed the full 2 percent regular assessment. That same year, and for the following 3 years—through 1996—the full 2 percent special assessment also was collected from FIGA members. Only in 1993 did FIGA impose both 2 percent assessments. By 2000, FIGA had sufficient funds to defease (i.e. "pay off") the Homestead bonds, although those funds were reserved to make the regular annual payments until the bonds expired in 2003.

The 2004 and 2005 Florida Hurricane Seasons

The 2004 hurricane season was particularly destructive for Florida, with four hurricanes causing extensive damage throughout the state. All four hurricanes occurred within a 45-day period beginning August 13. 2004, when Hurricane Charley made landfall as a category 4 hurricane with wind speeds of 145 miles per hour; followed on September 4 by Hurricane Frances, a Category 2 hurricane with wind speeds of 105 miles per hour. Next, Hurricane Ivan struck on September 16 followed by Hurricane Jeanne on September 26, which were both Category 3 hurricanes with respective winds speeds of 130 and 120 miles per hour at landfall. The paths of the hurricanes indicated virtually no part of Florida is immune from hurricane risk. Allegedly, the 2004 hurricanes caused damage to an estimated one in

every five homes in Florida. Every county in Florida but Liberty County reported losses as a result of the 2004 hurricane season.

The four hurricanes in 2004 are responsible for 1.66 million insurance claims and $20.9 billion dollars of insured losses in the Florida market. The primary insurers incurred $11.3 billion in losses (of this amount, Citizens incurred $1.8 billion), the reinsurers incurred $5.75 billion, and the Florida Hurricane Catastrophe Fund (FHCF) incurred $3.85 billion.

For the most part, the insurance and reinsurance industry recapitalized after the 2004 hurricane season. That is, the capital lost by primary insurers and reinsurers was replenished. Additionally, the FHCF was able to pay its share of the losses out of cash reserves and maintain a cash balance to use to pay claims to start the 2005 hurricane season.

However, as the state was still recovering, recapitalizing, and rebuilding from the 2004 hurricanes, the 2005 season began. The 2005 hurricane season was also destructive for Florida, with four hurricanes hitting Florida for the second year in a row.

Hurricane Dennis hit Florida in the early part of hurricane season, making landfall on July 10, 2005, on Santa Rosa Island with maximum sustained winds of 121 miles per hour, making it a category 3 hurricane. Its center moved across the western Florida panhandle into southwest Alabama. The estimated gross property loss in Florida caused by Hurricane Dennis is close to $1.4 billion. Over 57,000 insurance claims resulted from this hurricane.

Hurricane Katrina hit Florida on August 25, 2005 and moved west across the southern portion of the state and into the Gulf of Mexico. At landfall, Hurricane Katrina was a category 1 storm with maximum sustained winds of 81 miles per hour. Although Florida did not sustain as severe damage as New Orleans, Louisiana, Biloxi, Mississippi and surrounding areas, Hurricane Katrina caused an estimated gross property loss in Florida of approximately $1.8 billion due to almost 162,000 insurance claims.

The next hurricane to hit Florida in 2005 was Hurricane Rita which made landfall on September 20, 2005. Like Hurricane Katrina, Hurricane Rita moved west across the southern part of the state with maximum sustained winds of 105 miles per hour, making it a category 2 hurricane. It is estimated Hurricane Rita caused an estimated gross property loss in Florida of $157 million due to an estimated 4,000 insurance claims.

Hurricane Wilma moved across the southern portion of Florida taking the opposite path of Hurricanes Katrina and Rita. It moved eastward across Florida from the Gulf of Mexico to the Atlantic Ocean. It made landfall on October 24, 2005, near Cape Romano, Florida with wind speeds of 121 miles per hour, a category 3 hurricane. Insured losses from Hurricane Wilma are estimated at $10.4 billion, making it the costliest hurricane for Florida in 2005. Almost 800,000 insurance claims resulted from Hurricane Wilma.

Claim and loss statistics and the loss distribution among primary insurers, reinsurance, and the Florida Hurricane Catastrophe Fund are still in development and being reported, but the four 2005 storms are estimated to have generated a combined 1 million claims and an estimated $14 billion in insured losses in Florida. As of February 28, 2006, insurers have already paid over $4 billion in insurance proceeds for claims from the 2005 hurricane season.

Insurers' losses from the 2004 and 2005 hurricanes as well as meteorological expectations that the increase in hurricane activity will continue for the foreseeable future have caused both insurers and reinsurers to reevaluate their tolerance for risk as well as the related amount of additional capital they are willing to commit to Florida. Some insurers have added new underwriting restrictions to reflect changes in their exposure tolerance. Others have nonrenewed or cancelled policies. Still others have raised rates. In fact, since 2004 the top five insurers by market share have raised rates by an average of 28.6 percent with an average per year increase of 11.8 percent.

Since the 2005 hurricanes, the reinsurance market has partly recapitalized, but not yet fully replenished their investment capital. According to reports from the insurance industry, the reinsurance market is showing some signs that reinsurers are reconsidering the risk/return relationships available when compared with other investment opportunities. Reinsurance rates for wind reinsurance along the Gulf states are increasing for reinsurance purchased in 2006. In addition, reinsurers are increasing the retention levels for reinsurance.

Changes Proposed by the Bill

Under the bill, FIGA is authorized to contract with a city or county, or a combination of cities, counties, or cities and counties to issue tax-exempt revenue bonds for hurricane recovery. The provisions of the bill closely follow the law enacted by the 1992 Legislature to enable FIGA to pay the hurricane-related claims of insurers who became insolvent following Hurricane Andrew. As in 1993, FIGA will guarantee the tax-exempt bonds through the imposition of an emergency assessment of up to 2 percent in addition to the regular FIGA assessment of up to 2 percent. The guaranty association is authorized to charge the emergency assessment for the life of the bonds.

Definitions used in the laws that govern FIGA are amended at s. 631.54, F.S. The definition for the term "covered claim" is amended to specify that for an entity other than a person, i.e., a business or other legal entity, the residence of the entity is in the state where the entity's principal place of business is located. Under current law, for an entity other than a person, the state where the entity is incorporated is considered its state of residence. This means that an entity whose primary business location is in Florida, but that is incorporated in a state other than Florida, must seek reimbursement for unearned premiums or unpaid claims from the appropriate guaranty association of the state where the business entity is incorporated.

The powers and duties of FIGA are outlined in s. 631.57, F.S. The bill amends that law to authorize FIGA to enter into a contract with a municipality or a county, or a combination of the two, for the issuance of tax-exempt revenue bonds. Bond proceeds will be used by the city or county for hurricane recovery, although the proceeds are not required to be used exclusively within the boundaries of the issuing city or county. This means that the bond proceeds may be used by FIGA to settle unpaid claims or to refund unearned premiums to citizens of the state affected by the hurricane, even if the claimant's residence is not in the city or county that issues the bonds. Bonds may be issued by any local government substantially affected by a category 1 or stronger hurricane.

The bill authorizes FIGA to impose an emergency assessment of up to 2 percent for bond payments. The emergency assessment is in addition to the regular FIGA assessment of up to 2 percent. As with the FIGA regular assessment, the emergency assessment will be based upon an insurer's direct written premiums in the previous year, after the insurer makes any refunds. The bill specifically applies the emergency assessment only for bond payments and costs associated with their issuance. The FIGA board of directors may require the emergency assessment to be paid in a single payment or in 12 monthly installments.

Insurers are required by the bill to report their emergency assessments as part of the reports they file with OIR related to setting rates. This reporting is intended to ensure that each insurer charges premiums sufficient to satisfy its reserve requirements and to meet the other liquidity requirements in law.

The bill creates s. 631.695, F.S., relating to the issuance of revenue bonds through counties and municipalities. These provisions include several pages of legislative findings relating to the potential damage to the state if hurricane damage is not addressed and repaired quickly, especially if insurers become insolvent due to hurricane claims. The findings acknowledge the personal hardship to persons and families who suffer losses during a hurricane and the need for claims to be settled expeditiously. Otherwise, the findings realize that great damage can occur to the economy and the citizens of the state. The findings also recognize the success of the FIGA bonds issued in 1993 and their potential for

future use. The legislative findings likely will be used as part of the supporting documents that accompany any future bond issue for hurricane recovery.

The bill authorizes several uses for bonds issued for hurricane recovery. Among the authorized uses is the payment of covered claims of an insolvent insurer; to refinance or replace previous borrowings; to fund reserves for the bonds; to pay expenses incident to bond issuance; and other similar enumerated purposes. The state promises not to take any action that could endanger the availability of funds to repay the bonds. A severability clause is included in the bill.

The bill requires FIGA to file a report annually with the Senate President, the Speaker of the House, and the Chief Financial Officer. The report must specify the amount of bond proceeds used each year, the number of claims settled, and analyze the amount of emergency assessment needed to retire the bonds as promised. The bill specifies that the emergency assessment is not a premium and thus, is not subject to the premium tax, the payment of commissions, or other fees.

C. SECTION DIRECTORY:

Section 1. Amends s. 631.181, F.S., regarding the responsibility of a policyholder to file a "proof of claim" form.

Section 2. Amends s. 631.54, F.S., to modify the definition of a "covered claim".

Section 3. Amends s. 631.57, F.S., relating to the powers and duties of the Florida Insurance Guaranty Association.

Section 4. Creates s. 631.695, F.S., relating to a local government issuing revenue bonds.

Section 5. States that no provision in ss. 631.57 or 631.695, F.S., may be repealed until all bonds issued under the laws are paid in full.

Section 6. Provides a severability clause.

Section 7. Provides that the bill shall take effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The authority for FIGA to serve as guarantor for local government revenue bonds following hurricane damage to the state ensures that, even if insurers become insolvent due to large numbers of claims, funds will be available to pay the valid claims of the insolvent insurer and to refund any unearned premiums to its policyholders. Under current law, FIGA deducts a fee of $100 for each claim of an insolvent insurer that is settled by FIGA.

2. Expenditures:

   The costs to FIGA for implementing the bill should be minimal. Any costs incurred for preparing and offering the revenue bonds authorized by the bill will be paid from the bond proceeds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Cities and counties are authorized by the bill to issue tax-exempt revenue bonds for hurricane recovery. The bonds will be repaid by FIGA using an emergency assessment of up to 2 percent on the total premiums of insurers who are members of FIGA.

Bond proceeds may be used by a city or county substantially affected by a category 1 or stronger hurricane for rebuilding and repair of damaged structures. The proceeds will be available to a citizen whose insurer becomes insolvent following a hurricane. Bond monies will settle the valid claims of insolvent insurers and refund unearned premiums to affected policyholders.

2. Expenditures:

A city or county that issues revenue bonds under the bill is not required to repay the bonds from its own revenues. Rather, FIGA is authorized to charge its members an emergency assessment of up to 2 percent annually, for the life of the bonds. Expenses associated with issuing the bonds will be paid from bond proceeds. This means the costs to a city or county that issues the bonds should be negligible.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Insurers who are members of FIGA will be required to pay an emergency assessment of up to 2 percent of their respective premiums for the previous year to repay the bonds. Based upon the outstanding insurance policies in Florida for 2004, a 2 percent assessment on FIGA members would cost insurers an estimated $200 million.

D. FISCAL COMMENTS:

The authority for FIGA to serve as guarantor for revenue bonds issued by a local government for hurricane recovery mirrors authority granted to FIGA by the Legislature in 1992 following the destruction to south Florida caused by Hurricane Andrew. Although there is currently no need for such bonds to be issued, granting FIGA the authority to do so should expedite hurricane recovery if the state suffers damage from one or more hurricanes in the future. The need for such bonding authority is likely to be strongest if a hurricane makes landfall in a major urban area of the state. State law prohibits FIGA from using any state monies to settle claims against an insolvent insurer.

The revenue bonds issued in 1993 by the city of Homestead enabled FIGA to settle the claims of more than six insurers who became insolvent following Hurricane Andrew. It is likely that the ability to issue such bonds again also will facilitate recovery of the state's economy should insurers suffer losses large enough to become insolvent following a hurricane.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

On lines 183 and192, the bill refers to the Department (of Financial Services) relating to the levy of an emergency assessment of 2 percent against FIGA members in order to retire outstanding revenue bonds for hurricane recovery. The law designates OIR as the administrative entity to levy assessments. A similar reference to the department on line 210 also should be changed to the Office of Insurance Regulation.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to insurer insolvency; amending s.
3 631.181, F.S.; providing an exception to certain
4 requirements for a signed statement for certain claims;
5 providing requirements; amending s. 631.54, F.S.; revising
6 the definition of "covered claim"; amending s. 631.57,
7 F.S.; revising requirements and limitations for
8 obligations of the Florida Insurance Guaranty Association,
9 Inc., for covered claims; authorizing the association to
10 contract with counties and municipalities to issue revenue
11 bonds for certain purposes; authorizing the Department of
12 Financial Services to levy assessments and emergency
13 assessments on insurers under certain circumstances for
14 certain bond repayment purposes; providing requirements
15 for and limitations on such assessments; providing for
16 payment, collection, and distribution of such assessments;
17 requiring insurers to include an analysis of revenues from
18 such assessments in a required report; providing rate
19 filing requirements for insurers relating to such
20 assessments; providing for continuing annual assessments
21 under certain circumstances; specifying emergency
22 assessments as not premium and not subject to certain
23 taxes, fees, or commissions; specifying insurer liability
24 for emergency assessments; providing an exception;
25 creating s. 631.695, F.S.; providing legislative findings
26 and purposes; providing for issuance of revenue bonds
27 through counties and municipalities to fund assistance
28 programs for paying covered claims for hurricane damage;

29 providing procedures, requirements, and limitations for
30 counties, municipalities, and the Florida Insurance
31 Guaranty Association, Inc., relating to issuance and
32 validation of such bonds; prohibiting pledging the funds,
33 credit, property, and taxing power of the state, counties,
34 and municipalities for payment of bonds; specifying
35 authorized uses of bond proceeds; limiting the term of
36 bonds; specifying a state covenant to protect bondholders
37 from adverse actions relating to such bonds; specifying
38 exemptions for bonds, notes, and other obligations of
39 counties and municipalities from certain taxes or
40 assessments on property and revenues; authorizing counties
41 and municipalities to create a legal entity to exercise
42 certain powers; requiring the association to issue an
43 annual report on the status of certain uses of bond
44 proceeds; providing report requirements; requiring the
45 association to provide a copy of the report to the
46 Legislature and Chief Financial Officer; prohibiting
47 repeal of certain provisions relating to certain bonds
48 under certain circumstances; providing severability;
49 providing an effective date.
50
51 Be It Enacted by the Legislature of the State of Florida:
52
53 Section 1. Paragraph (f) is added to subsection (2) of
54 section 631.181, Florida Statutes, to read:
55 631.181 Filing and proof of claim.--
56 (2)

57 (f) The signed statement required by this section shall
58 not be required on claims for which adequate claims file
59 documentation exists within the records of the insolvent
60 insurer. Claims for payment of unearned premium shall not be
61 required to use the signed statement required by this section if
62 the receiver certifies to the guaranty fund that the records of
63 the insolvent insurer are sufficient to determine the amount of
64 unearned premium owed to each policyholder of the insurer and
65 such information is remitted to the guaranty fund by the
66 receiver in electronic or other mutually agreed-upon format.
67 Section 2. Subsection (3) of section 631.54, Florida
68 Statutes, is amended to read:
69 631.54 Definitions.--As used in this part:
70 (3) "Covered claim" means an unpaid claim, including one
71 of unearned premiums, which arises out of, and is within the
72 coverage, and not in excess of, the applicable limits of an
73 insurance policy to which this part applies, issued by an
74 insurer, if such insurer becomes an insolvent insurer and the
75 claimant or insured is a resident of this state at the time of
76 the insured event or the property from which the claim arises is
77 permanently located in this state. For entities other than
78 individuals, the residence of a claimant, insured, or
79 policyholder is the state in which the entity's principal place
80 of business is located at the time of the insured event.
81 "Covered claim" shall not include:
82 (a) Any amount due any reinsurer, insurer, insurance pool,
83 or underwriting association, sought directly or indirectly

84 through a third party, as subrogation, contribution,
85 indemnification, or otherwise; or
86 (b) Any claim that would otherwise be a covered claim
87 under this part that has been rejected by any other state
88 guaranty fund on the grounds that an insured's net worth is
89 greater than that allowed under that state's guaranty law.
90 Member insurers shall have no right of subrogation,
91 contribution, indemnification, or otherwise, sought directly or
92 indirectly through a third party, against the insured of any
93 insolvent member.
94 Section 3. Paragraph (a) of subsection (1), paragraph (d)
95 of subsection (2), and paragraph (a) of subsection (3) of
96 section 631.57, Florida Statutes, are amended, and paragraph (e)
97 is added to subsection (3) of that section, to read:
98 631.57 Powers and duties of the association.--
99 (1) The association shall:
100 (a)1. Be obligated to the extent of the covered claims
101 existing:
102 a. Prior to adjudication of insolvency and arising within
103 30 days after the determination of insolvency;
104 b. Before the policy expiration date if less than 30 days
105 after the determination; or
106 c. Before the insured replaces the policy or causes its
107 cancellation, if she or he does so within 30 days of the
108 determination.
109 2.<u>a.</u> The obligation under subparagraph 1. shall include
110 only that amount of each covered claim which is in excess of
111 $100 and is less than $300,000, except with respect to policies

112 covering condominium associations or homeowners' associations,
113 which associations have a responsibility to provide insurance
114 coverage on residential units within the association, the
115 obligation shall include that amount of each covered property
116 insurance claim which is less than $100,000 multiplied by the
117 number of condominium units or other residential units; however,
118 as to homeowners' associations, this sub-subparagraph
119 ~~subparagraph~~ applies only to claims for damage or loss to
120 residential units and structures attached to residential units.
121 b. Notwithstanding sub-subparagraph a., the association
122 has no obligation to pay covered claims that are to be paid from
123 the proceeds of bonds issued under s. 631.695. However, the
124 association shall assign and pledge the first available moneys
125 from all or part of the assessments to be made under paragraph
126 (3)(a) to or on behalf of the issuer of such bonds for the
127 benefit of the holders of such bonds. The association shall
128 administer any such covered claims and present valid covered
129 claims for payment in accordance with the provisions of the
130 assistance program in connection with which such bonds have been
131 issued.
132 3. In no event shall the association be obligated to a
133 policyholder or claimant in an amount in excess of the
134 obligation of the insolvent insurer under the policy from which
135 the claim arises.
136 (2) The association may:
137 (d) Negotiate and become a party to such contracts as are
138 necessary to carry out the purpose of this part. Additionally,
139 the association may enter into such contracts with a

140 municipality, a county, or a legal entity created pursuant to s.
141 163.01(7)(g) as are necessary in order for the municipality,
142 county, or legal entity to issue bonds under s. 631.695. In
143 connection with the issuance of any such bonds and the entering
144 into of any such necessary contracts, the association may agree
145 to such terms and conditions as the association deems necessary
146 and proper.
147 (3)(a) To the extent necessary to secure the funds for the
148 respective accounts for the payment of covered claims, ~~and also~~
149 to pay the reasonable costs to administer the same, and to
150 secure the funds for the account specified in s. 631.55(2)(c),
151 or to retire indebtedness, including, without limitation, the
152 principal, redemption premium, if any, and interest on, and
153 related costs of issuance of, bonds issued under s. 631.695, and
154 the funding of any reserves and other payments required under
155 the bond resolution or trust indenture pursuant to which such
156 bonds have been issued, the office, upon certification of the
157 board of directors, shall levy assessments in the proportion
158 that each insurer's net direct written premiums in this state in
159 the classes protected by the account bears to the total of said
160 net direct written premiums received in this state by all such
161 insurers for the preceding calendar year for the kinds of
162 insurance included within such account. Assessments shall be
163 remitted to and administered by the board of directors in the
164 manner specified by the approved plan. Each insurer so assessed
165 shall have at least 30 days' written notice as to the date the
166 assessment is due and payable. Every assessment shall be made as
167 a uniform percentage applicable to the net direct written

168 premiums of each insurer in the kinds of insurance included
169 within the account in which the assessment is made. The
170 assessments levied against any insurer shall not exceed in any
171 one year more than 2 percent of that insurer's net direct
172 written premiums in this state for the kinds of insurance
173 included within such account during the calendar year next
174 preceding the date of such assessments.
175 (e)1.a. In addition to assessments otherwise authorized in
176 paragraph (a) and to the extent necessary to secure the funds
177 for the account specified in s. 631.55(2)(c), or to retire
178 indebtedness, including, without limitation, the principal,
179 redemption premium, if any, and interest on, and related costs
180 of issuance of, bonds issued under s. 631.695, and the funding
181 of any reserves and other payments required under the bond
182 resolution or trust indenture pursuant to which such bonds have
183 been issued, the department, upon certification of the board of
184 directors, shall levy emergency assessments as provided in this
185 paragraph upon insurers holding a certificate of authority. The
186 emergency assessments payable under this paragraph by any
187 insurer shall not exceed in any single year more than 2 percent
188 of that insurer's direct written premiums, net of refunds, in
189 this state during the preceding calendar year for the kinds of
190 insurance within the account specified in s. 631.55(2)(c).
191 b. Any emergency assessments authorized under this
192 paragraph shall be levied by the department upon insurers
193 holding a certificate of authority, upon certification as to the
194 need for such assessments by the board of directors, in each
195 year that bonds issued under s. 631.695 and secured by such

196 emergency assessments are outstanding, in such amounts up to
197 such 2-percent limit as required in order to provide for the
198 full and timely payment of the principal of, redemption premium,
199 if any, and interest on, and related costs of issuance of, such
200 bonds. The emergency assessments provided for in this paragraph
201 are assigned and pledged to the municipality, county, or legal
202 entity issuing bonds under s. 631.695, for the benefit of the
203 holders of such bonds, in order to enable such municipality,
204 county, or legal entity to provide for the payment of the
205 principal of, redemption premium, if any, and interest on such
206 bonds, the cost of issuance of such bonds, and the funding of
207 any reserves and other payments required under the bond
208 resolution or trust indenture pursuant to which such bonds have
209 been issued, without the necessity of any further action by the
210 association, the department, or any other party. To the extent
211 that bonds are issued under s. 631.695 and the association
212 determines to secure such bonds by a pledge of revenues received
213 from the emergency assessments, such bonds, upon such pledge of
214 revenues, shall be secured by and payable from the proceeds of
215 such emergency assessments, and the proceeds of emergency
216 assessments levied under this paragraph shall be remitted
217 directly to and administered by the trustee or custodian
218 appointed for such bonds.
219 c. Emergency assessments under this paragraph may be
220 payable in a single payment or, at the option of the
221 association, may be payable in 12 monthly installments with the
222 first installment being due and payable at the end of the month
223 after an emergency assessment is levied and subsequent

224 installments being due not later than the end of each succeeding
225 month.
226 d. If emergency assessments are imposed, the report
227 required by s. 631.695(7) shall include an analysis of the
228 revenues generated from the emergency assessments imposed under
229 this paragraph.
230 2. In order to ensure that insurers paying emergency
231 assessments levied under this paragraph continue to charge rates
232 that are neither inadequate nor excessive, within 90 days after
233 being notified of such assessments, each insurer that is to be
234 assessed pursuant to this paragraph shall submit a rate filing
235 for coverage included within the account specified in s.
236 631.55(2)(c) and for which rates are required to be filed under
237 s. 627.062. If the filing reflects a rate change that, as a
238 percentage, is equal to the difference between the rate of such
239 assessment and the rate of the previous year's assessment under
240 this paragraph, the filing shall consist of a certification so
241 stating and shall be deemed approved when made. Any rate change
242 of a different percentage shall be subject to the standards and
243 procedures of s. 627.062.
244 3. An annual assessment under this paragraph shall
245 continue while the bonds issued with respect to which the
246 assessment was imposed are outstanding, including any bonds the
247 proceeds of which were used to refund bonds issued pursuant to
248 s. 631.695, unless adequate provision has been made for the
249 payment of the bonds in the documents authorizing the issuance
250 of such bonds.
251 4. Emergency assessments under this paragraph are not

252 premium and are not subject to the premium tax, to any fees, or
253 to any commissions. An insurer is liable for all emergency
254 assessments that the insurer collects and shall treat the
255 failure of an insured to pay an emergency assessment as a
256 failure to pay the premium. An insurer is not liable for
257 uncollectible emergency assessments.
258 Section 4. Section 631.695, Florida Statutes, is created
259 to read:
260 631.695 Revenue bond issuance through counties or
261 municipalities.--
262 (1) The Legislature finds:
263 (a) The potential for widespread and massive damage to
264 persons and property caused by hurricanes making landfall in
265 this state can generate insurance claims of such a number as to
266 render numerous insurers operating within this state insolvent
267 and therefore unable to satisfy covered claims.
268 (b) The inability of insureds within this state to receive
269 payment of covered claims or to timely receive such payment
270 creates financial and other hardships for such insureds and
271 places undue burdens on the state, the affected units of local
272 government, and the community at large.
273 (c) In addition, the failure of insurers to pay covered
274 claims or to timely pay such claims due to the insolvency of
275 such insurers can undermine the public's confidence in insurers
276 operating within this state, thereby adversely affecting the
277 stability of the insurance industry in this state.
278 (d) The state has previously taken action to address these
279 problems by adopting the Florida Insurance Guaranty Association

280 Act, which, among other things, provides a mechanism for the
281 payment of covered claims under certain insurance policies to
282 avoid excessive delay in payment and to avoid financial loss to
283 claimants or policyholders because of the insolvency of an
284 insurer.
285 (e) In the wake of the unprecedented destruction caused by
286 various hurricanes that have made landfall in this state, the
287 resultant covered claims, and the number of insurers rendered
288 insolvent thereby, it is evident that alternative programs must
289 be developed to allow the Florida Insurance Guaranty
290 Association, Inc., to more expeditiously and effectively provide
291 for the payment of covered claims.
292 (f) It is therefore determined to be in the best interests
293 of, and necessary for, the protection of the public health,
294 safety, and general welfare of the residents of this state, and
295 for the protection and preservation of the economic stability of
296 insurers operating in this state, and it is declared to be an
297 essential public purpose, to permit certain municipalities and
298 counties to take such actions as will provide relief to
299 claimants and policyholders having covered claims against
300 insolvent insurers operating in this state by expediting the
301 handling and payment of covered claims.
302 (g) To achieve the foregoing purposes, it is proper to
303 authorize municipalities and counties of this state
304 substantially affected by the landfall of a category 1 or
305 greater hurricane to issue bonds to assist the Florida Insurance
306 Guaranty Association, Inc., in expediting the handling and
307 payment of covered claims of insolvent insurers.

308 (h) In order to avoid the needless and indiscriminate
309 proliferation, duplication, and fragmentation of such assistance
310 programs, it is in the best interests of the residents of this
311 state to authorize municipalities and counties severely affected
312 by a category 1 or greater hurricane to provide for the payment
313 of covered claims beyond their territorial limits in the
314 implementation of such programs.
315 (i) It is a paramount public purpose for municipalities
316 and counties substantially affected by the landfall of a
317 category 1 or greater hurricane to be able to issue bonds for
318 the purposes described in this section. Such issuance shall
319 provide assistance to residents of those municipalities and
320 counties as well as to other residents of this state.
321 (2) The governing body of any municipality or county the
322 residents of which have been substantially affected by a
323 category 1 or greater hurricane may issue bonds to fund an
324 assistance program in conjunction with, and with the consent of,
325 the Florida Insurance Guaranty Association, Inc., for the
326 purpose of paying claimants' or policyholders' covered claims as
327 defined in s. 631.54 arising through the insolvency of an
328 insurer, which insolvency is determined by the Florida Insurance
329 Guaranty Association, Inc., to have been a result of a category
330 1 or greater hurricane, regardless of whether such claimants or
331 policyholders are residents of such municipality or county or
332 the property to which such claim relates is located within or
333 outside the territorial jurisdiction of such municipality or
334 county. The power of a municipality or county to issue bonds as
335 described in this section is in addition to any powers granted

336 by law and may not be abrogated or restricted by any provisions
337 in such municipality's or county's charter. A municipality or
338 county issuing bonds for this purpose shall enter into such
339 contracts with the Florida Insurance Guaranty Association, Inc.,
340 or any entity acting on behalf of the Florida Insurance Guaranty
341 Association, Inc., as are necessary to implement the assistance
342 program. Any bonds issued by a municipality or county or
343 combination thereof under this subsection shall be payable from
344 and secured by moneys received by or on behalf of the
345 municipality or county from assessments levied under s.
346 631.57(3)(a) and assigned and pledged to or on behalf of the
347 municipality or county for the benefit of the holders of such
348 bonds in connection with such assistance program. The funds,
349 credit, property, and taxing power of the state or any
350 municipality or county shall not be pledged for the payment of
351 such bonds.
352 (3) Bonds may be validated by such municipality or county
353 pursuant to chapter 75. The proceeds of such bonds may be used
354 to pay covered claims of insolvent insurers; to refinance or
355 replace previously existing borrowings or financial
356 arrangements; to pay interest on bonds; to fund reserves for the
357 bonds; to pay expenses incident to the issuance or sale of any
358 bond issued under this section, including costs of validating,
359 printing, and delivering the bonds, costs of printing the
360 official statement, costs of publishing notices of sale of the
361 bonds, costs of obtaining credit enhancement or liquidity
362 support, and related administrative expenses; or for such other
363 purposes related to the financial obligations of the fund as the

364 association may determine. The term of the bonds may not exceed
365 30 years.
366 (4) The state covenants with holders of bonds of the
367 assistance program that the state will not take any action that
368 will have a material adverse effect on such holders and will not
369 repeal or abrogate the power of the board of directors of the
370 association to direct the Office of Insurance Regulation to levy
371 the assessments and to collect the proceeds of the revenues
372 pledged to the payment of such bonds as long as any such bonds
373 remain outstanding unless adequate provision has been made for
374 the payment of such bonds in the documents authorizing the
375 issuance of such bonds.
376 (5) The accomplishment of the authorized purposes of such
377 municipality or county under this section is in all respects for
378 the benefit of the people of the state, for the increase of
379 their commerce and prosperity, and for the improvement of their
380 health and living conditions. Such municipality or county, in
381 performing essential governmental functions in accomplishing its
382 purposes, is not required to pay any taxes or assessments of any
383 kind whatsoever upon any property acquired or used by the county
384 or municipality for such purposes or upon any revenues at any
385 time received by the county or municipality. The bonds, notes,
386 and other obligations of such municipality or county, and the
387 transfer of and income from such bonds, notes, and other
388 obligations, including any profits made on the sale of such
389 bonds, notes, and other obligations, are exempt from taxation of
390 any kind by the state or by any political subdivision or other
391 agency or instrumentality of the state. The exemption granted in

392 this subsection is not applicable to any tax imposed by chapter
393 220 on interest, income, or profits on debt obligations owned by
394 corporations.
395 (6) Two or more municipalities or counties the residents
396 of which have been substantially affected by a category 1 or
397 greater hurricane may create a legal entity pursuant to s.
398 163.01(7)(g) to exercise the powers described in this section as
399 well as those powers granted in s. 163.01(7)(g). Reference in
400 this section to a municipality or county includes such legal
401 entity.
402 (7) The association shall issue an annual report on the
403 status of the use of bond proceeds as related to insolvencies
404 caused by hurricanes. The report must contain the number and
405 amount of claims paid. The association shall also include an
406 analysis of the revenue generated from the assessment levied
407 under s. 631.57(3)(a) to pay such bonds. The association shall
408 submit a copy of the report to the President of the Senate, the
409 Speaker of the House of Representatives, and the Chief Financial
410 Officer within 90 days after the end of each calendar year in
411 which bonds were outstanding.
412 Section 5. No provision of s. 631.57 or s. 631.695,
413 Florida Statutes, shall be repealed until such time as the
414 principal, redemption premium, if any, and interest on all bonds
415 issued under s. 631.695, Florida Statutes, payable and secured
416 from assessments levied under s. 631.57(3)(a), Florida Statutes,
417 have been paid in full or adequate provision for such payment
418 has been made in accordance with the bond resolution or trust
419 indenture pursuant to which such bonds were issued.

420 Section 6. If any provision of this act or the application
421 thereof to any person or circumstance is held invalid, the
422 invalidity shall not affect other provisions or applications of
423 the act which can be given effect without the invalid provision
424 or application, and to this end the provisions of this act are
425 declared severable.
426 Section 7. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1113 CS Insurance Agents
SPONSOR(S): Lopez-Cantera and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 2526

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance Committee	18 Y, 0 N, w/CS	Callaway	Cooper
2) State Administration Appropriations Committee		Rayman	Belcher
3) Commerce Council			
4)			
5)			

SUMMARY ANALYSIS

Under current law, applicants for licensure by the Department of Financial Services (DFS or department) as an insurance agent, customer representative, service representative, managing general agent, or reinsurance intermediary have to be fingerprinted as a condition of licensure. Fingerprinting is done by a law enforcement agency or by other department-approved entities. The fingerprinting is done so the department can obtain the applicant's state, federal, and local criminal history to use in its investigation into an applicant's qualifications for licensure. The department provides fingerprinting at 68 locations throughout the state. Sixty four locations are at county public school administrative offices and the locations in Duval, Dade, Broward, and Palm Beach counties are at county facilities (rather than school administrative offices). This is in addition to the law enforcement facilities where applicants can get fingerprinted. Applicants for licensure must pay a fee sufficient to "cover fingerprint processing" which is currently $64 per applicant, set by department rule.

The department requires most license applicants to pass an examination in order to become licensed. The bill requires the DFS to offer fingerprinting services to licensure applicants at each of its testing centers. The department currently has 19 testing centers. Currently, fingerprinting services are not available at the testing centers.

The bill allows a license applicant to take the license examination before his or her license application is submitted or approved and requires the applicant to take a prelicensing course before taking the license examination. The bill requires the department to collect self-reported race/ethnicity and gender information from testing examinees and to use this information to prepare and publish reports on testing results, separated by race/ethnicity and gender.

Requiring fingerprinting at the testing centers may increase testing space lease or rental fees the testing vendor has to pay. Additionally, the department may not be able to find a private vendor to perform fingerprinting at each testing location due to the costs of the fingerprinting equipment ($285,000+) in relation to the fingerprinting fee of $64 per applicant. Accordingly, the department would have to do the fingerprinting in-house which entails the purchase the fingerprinting equipment and associated expenses. The department will need additional resources to implement the bill, if it cannot find a private vendor to contract with to provide fingerprinting services at examination locations. The bill requires the department to spend an additional $158,995 per year for 3 new FTEs. In addition, the department estimates $120,069 will need to be spent in fiscal year 2006-2007 for implementation of the bill. The bill does not provide an appropriation to the department for implementation.

The bill provides and effective July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The bill requires the DFS to provide fingerprinting services for license applicants at 19 new locations.

The bill requires the DFS to collect additional information from testing examinees and to compile and publish testing results.

Safeguard Individual Liberty: A license applicant will have 19 new locations to obtain the fingerprinting required as part of his or her license application.

The bill requires license applicants to take a prelicensing course before being able to take the licensing examination.

Promote Personal Responsibility: The bill exempts adjusters having a specified adjusting designation from having to take the adjuster licensing test.

B. EFFECT OF PROPOSED CHANGES:

Licensure of Insurance Agents in Florida

There are many different types of insurance representatives. These include agents, customer representatives, service representatives, adjusters, and others.

In general, insurance agents transact insurance on behalf of an insurer or insurers. Agents must be licensed by the Department of Financial Services (DFS or department) to act as an agent for an insurer, and be appointed (i.e., given the authority by an insurance company to transact business on its behalf) by at least one insurer to act as the agent for that particular appointing insurer or insurers.[1] Requirements for insurance agents vary by line and based upon resident or nonresident license type.

"Managing general agents" are persons managing all or part of the insurance business of an insurer.[2] A managing general agent is authorized to adjust and pay claims and negotiate reinsurance on behalf of the insurer.[3]

"Customer representatives" are persons appointed by a general lines agent or agency to assist that agent or agency in transacting the business of insurance from the office of that agent or agency.[4]

"Adjusters" include public adjusters, independent adjusters, or company employee adjusters.[5] Generally, a public adjuster is any person, other than a licensed attorney, who prepares, completes, or files an insurance claim for an insured or who negotiates or settles an insurance claim on behalf of an insured.[6] An independent adjuster is any person who is self-employed or employed by an independent adjusting firm and who works for an insurer to ascertain and determine the amount of an insurance claim, loss, or damage or to settle an insurance claim under an insurance contract.[7] A company

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1 s. 626.112, F.S. (2005).
2 s. 626.015(14), F.S. (2005).
3 Id.
4 s. 626.015(4), F.S. (2005).
5 s. 626.015(1), F.S. (2005).
6 s. 626.854, F.S. (2005).
7 s. 626.855, F.S. (2005).

adjuster is any person employed in-house by an insurer who ascertains and determines the amount of an insurance claim, loss, or damage or settles an insurance claim under an insurance contract.[8]

"Service representatives" are persons employed by an insurer or managing general agent for the purpose of assisting a general lines agent in negotiating and affecting an insurance contract.[9]

"Reinsurance intermediaries" include reinsurance intermediary brokers and reinsurance intermediary managers.[10] A reinsurance intermediary broker is any person who solicits, negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding insurer without the power to bind reinsurance on behalf of the ceding insurer.[11] A reinsurance intermediary manager is any person who has authority to bind the assumed reinsurance business of a reinsurer or manages the reinsurance business of a reinsurer and acts as an agent of the reinsurer.[12]

Licensing Requirements

All of the above-defined insurance representatives require a license from the DFS. Although requirements vary by license and line of authority, general requirements for licensure include submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints.

Fingerprinting Requirement

The fingerprint requirement in current law (s. 626.171(4), F.S.) requires the agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary applicant's application for licensure to be accompanied by a set of the applicant's fingerprints. If the applicant is not an individual (i.e. a sole proprietorship, partnership, or corporation), fingerprints must be provided by the sole proprietor, majority owner, partners, officers, and directors, whichever applicable. If an insurance representative entity licensed by the DFS changes ownership or if new partners, officers, or directors of the entity are employed or appointed, the new owners, partners, officers, or directors must submit fingerprints to the DFS within 30 days after the change.

The applicant's fingerprints must be taken by a law enforcement agency or other entity approved by the DFS. The DFS uses the fingerprints as part of its investigation into an applicant's qualifications under s. 626.201, F.S., Section 626.201, F.S., requires the DFS to submit an applicant's fingerprints to the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) to discern whether the applicant has a state, federal or local criminal record. Section 624.34, F.S., sets forth what procedures the FDLE uses to accept and process the applicant's fingerprints.

In addition to a law enforcement agency location, an applicant for licensure as one of the above described insurance representatives can get fingerprinted at 64 county public school administrative offices. However, in Duval, Dade, Broward, and Palm Beach counties,[13] fingerprinting is provided by the DFS at county government locations, rather than at the school administrative offices.

The department provides fingerprinting services at the school administrative offices under a memorandum of understanding between the DFS and the Department of Education (DOE). The DOE is required to provide fingerprinting of numerous school personnel, especially after the passage of the Jessica Lunsford Act (Ch. 2005-28, L.O.F.). The DOE contracts with a private vendor to provide fingerprinting services at the county school offices and the memorandum of understanding between the DFS and the DOE allows the DFS to provide fingerprinting for its license applicants under the DOE contract with the private vendor. The school district offices offer fingerprinting during normal business hours.

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[8] s. 626.856, F.S. (2005).
[9] s. 626.015(17), F.S. (2005).
[10] s. 626.7492(2)(e), F.S. (2005).
[11] s. 626.7492(2)(f), F.S. (2005).
[12] s. 626.7492(2)(g), F.S. (2005).
[13] Fingerprint locations are in Jacksonville, Miami, Ft. Lauderdale, and West Palm Beach.

According to the department, the fingerprinting fee for fingerprints done at most school district locations is $61 and the exact fingerprinting fee at the school districts varies by district, although by administrative rule, the DFS sets the fingerprinting fee at $64.[14] The applicant typically pays the fingerprint vendor on-line by debit or credit card; however, the vendor also accepts money orders at the fingerprinting site. The vendor then pays FDLE and the FBI for processing the fingerprints and the vendor electronically sends the fingerprints to the FDLE for processing in accordance with the statute.

The department contracts with a different vendor to provided fingerprinting services at the fingerprinting locations in Duval, Dade, Broward, and Palm Beach counties. This vendor charges license applicants $64 for fingerprinting and is paid directly by the applicant.

The department does not pay any money for fingerprinting services and processing directly to the DOE, the school boards, or to the fingerprinting vendor at the four county locations. Rather, the entire fee is borne by the applicant.

In most cases, if the applicant submits his or her fingerprints prior to the licensure examination, the DFS receives the results of the applicant's criminal background check prior to the examination date. If the applicant has a criminal history that would preclude licensure, the department notifies the applicant before he or she takes the licensure examination and incurs the examination fee of $56.[15]

The department contracts with one private vendor to administer its licensure examinations in 19 cities[16] in Florida. Licensure examinations are given frequently, based on the demand for testing due to the applications received. The testing vendor leases permanent space to conduct the testing and does not own any testing locations itself. The examinations are offered Monday through Friday from 8:00 am until 9:30 pm, and on Saturday from 8:00 am until 5:00 pm.[17]

Proposed Changes Relating to Fingerprinting Requirement

The bill requires the DFS to provide fingerprinting at all of its examination centers during the examination times. The department currently has 19 examination centers in Florida and contracts with a private vendor for the administering of its examinations. Examination times are not set by statute or administrative rule; rather they are set based on the demand. According to proponents of the bill, permitting fingerprinting at testing locations will allow license applicants to be fingerprinted at the examination centers rather than having them leave work to be fingerprinted at the current fingerprinting locations.

Section 624.501, F.S., allows the DFS to charge a fee for fingerprinting. The fee amount is not set by statute; rather the statue allows the department to charge an amount sufficient "to cover fingerprint processing." By administrative rule, the department established the fee at $64 and the fingerprint processing fees are paid directly from the applicant to the fingerprint vendor.

Fingerprinting equipment is estimated to cost $15,000 per machine, for a total of $285,000 to put machines at all 19 testing locations. According to the department, maintenance contracts are needed on the machines and personnel are required to be hired to run them. Because there is no way to ascertain how many license applicants will get fingerprinted at the testing location, the fingerprinting vendor providing fingerprinting at the testing locations may not be able to recoup the $285,000+ expense, especially at a fingerprinting fee of $64 per applicant. Thus, the department may not be able to locate a private vendor willing to provide fingerprinting at the testing centers and thus may have to provide the fingerprinting itself.

Additionally, if an applicant gets his or her fingerprinting done at the testing location, the department will be unable to review the fingerprint results prior to the applicant taking the license examination. This

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[14] Rule 69B-211.005, F.A.C. Additionally, $47 of the fingerprinting fee is paid by the vendor to the FDLE and the FBI, with the remainder kept by the vendor.

[15] Rule 69B-211.005, F.A.C. sets the examination fee at $56 per examination.

[16] Examination centers are located in Boyton Beach, Coral Gables, Fort Lauderdale, Ft. Myers (2 locations), Gainesville, Hollywood, Jacksonville, Lake Mary, Lakeland, Melbourne, Miami, Orlando, Ormond Beach, Pensacola, Sarasota, St. Petersburg, Tallahassee, and Tampa.

[17] Personal communication from a representative of the DFS, on file with the Insurance Committee.

could lead to applicants taking the license examination that are not qualified for a license due to a criminal background. Currently, the department receives the fingerprint results prior to the applicant taking the license examination and is able to notify the applicant he or she is not qualified for a license based on their background check. This prevents the applicant from incurring the examination fee unnecessarily.

The department believes all of its testing centers are rented or leased by the examination vendor. If the testing centers are not large enough to accommodate fingerprinting equipment and any traffic flow associated with the fingerprinting, then the examination vendor would have to find new or additional testing space, possibly increasing the rental fee to the vendor or compromising the lease the vendor is already obligated to for the space. Any increased cost in testing space rental or lease cannot be passed on to the policyholder as the testing fee is set by administrative rule. Thus, the department may have to incur the increased cost.

License Application Requirement

Section 626.171, F.S., provides application requirements for licenses as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary. Section 626.211, F.S., requires the DFS to approve a license application prior to the applicant taking the licensure examination if the department believes the applicant meets the license qualifications and the applicant's application is complete. Once the applicant's application is complete, the department must notify the applicant of the examination date and time. Once the applicant takes the licensure examination and passes it, he or she is issued the appropriate license.

The bill amends current law and allows a license applicant to take the licensure examination before submitting their license application or before obtaining approval of their license application. If the applicant takes the licensing test before applying for the license, the department is required to issue the license within 15 days after it approves the license application. If an applicant chooses to take the licensure examination first, the applicant will receive their test results before investing moneys ($114 maximum for the application submission and fingerprinting) in the application process. The bill's proponents believe allowing license applicants to take the licensure examination before submitting their licensure application or obtaining approval of it will streamline the licensing process to help increase the number of insurance representatives, especially increasing the number of insurance representatives servicing minority communities.

Examination Requirement

Exemptions -- Section 626.221, F.S., sets forth the examination requirements and exemptions for insurance agent, adjuster, and customer representative licenses. At least 13 exemptions from the examination requirement are provided in the statute. If an applicant for licensure as an agent, adjuster, or customer representative meets one of the exemptions, he or she does not have to take the examination associated with the license applied for. One of the exemptions from the adjuster examination is for applicants who have the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in Florida or the designation of Professional Claims Adjuster (PCA) from the Professional Career Institute. Exemptions are provided for these designated adjusters because the DFS approves the curriculum of the educational institutions and ensures the curriculum covers a comprehensive analysis of insurance and included testing at least equal to testing given by the DFS for the all-lines adjuster license.

The bill includes a new adjuster designation in the adjuster examination exemption. Adjusters designated as a Certified Claims Adjuster (CCA) from the Association of Property and Casualty Claims Professionals are exempt from adjuster license examinations.

Prelicensing Courses -- There is no provision in current law requiring an applicant for a license as an insurance representative to take a prelicensing course before being allowed to take the licensing examination. License applicants are only required to have his or her application for licensure approved and to pay the examination fees in order to take the license examination. The bill removes these two requirements and requires applicants for licensure to complete a prelicensing course in order to sit for

the licensure examination. Thus, the only examination prerequisite will be completion of a prelicensing course.

Testing Information and Results -- The bill also adds information for the DFS to request and gather from licensee examinees and requires the department to report specified testing information. The bill requires the department to request license examinees to voluntarily self-report race/ethnicity and gender information. Based on the race/ethnicity and gender information collected, the department is required to prepare, publicly announce, and publish an Examination Report for each examination administered in the year. The Examination Report is due on May 1st and contains pass/fail information and test score information for each examination given on a race/ethnicity and gender basis. An Item Report is also required to be done annually by the department. This report is also due on May 1st and contains statistical information relating to each operational item on each test form administered in the prior year, separated by race/ethnicity, the correct-answer rates, and the correlations.

License examination retention requirements are also added by the bill. The department is also required to reasonably accommodate disabled examinees. According to the DFS, their contract with the testing vendor already requires the vendor to comply with the American with Disabilities Act.

C. SECTION DIRECTORY:

Section 1: Amending s. 626.171, F.S.; requiring fingerprinting of applicants for licensure by the department to be done at all department examination centers.

Section 2: Amending s. 626.211, F.S.; revising circumstances under which the department must notify an applicant about license examinations.

Section 3: Amending s. 626.221, F.S.; expanding the authorized adjuster designations for exemptions from adjuster license examinations.

Section 4: Amending s. 626.231, F.S.; requiring license examinees to take a prelicensing course as a prerequisite for taking the licensing examination.

Section 5: Amending s. 626.261, F.S.; providing for license examinees to voluntarily report race or ethnicity or gender information; requiring the department to prepare and publish examination reports summarizing testing results based on race or ethnicity or gender; requiring records retention of specified testing information by the department; requiring the department to reasonably accommodate disabled examinees.

Section 6: Amends 626.291, F.S.; requiring the DFS to issue a license within 15 days of the DFS's approval of an application if the applicant took the licensing exam prior to submitting their application.

Section 7. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	FY 2006–07	FY 2007-08
1. Revenues:		
None.		
2. Expenditures:		
Recurring		

Salaries and Benefits (3 FTE) (Salary rate 103,285)	$ 138,607	$ 138,607
Expenses	19,209	19,209
Human Resources Services	1,179	1,179
Total – recurring	$ 158,995	$ 158,995
Non-Recurring		
OPS	$ 104,340	
Expenses	$ 10,029	
Operating Capital Outlay	5,700	
Total – non-recurring	$ 120,069	
Total Expenditures:		
Insurance Regulatory Trust Fund	$ 279,064	$ 158,995

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Being able to get fingerprinted at the testing location would allow applicants to complete more application requirements at one location; however, the fingerprints taken at the examination center would not likely to be able to be processed and the results furnished to the DFS before the examination, as is the current process. Thus, applicants may incur an examination fee and then be disqualified for a license based on the criminal background check. Having the criminal background check done before the examination allows the department to notify applicants disqualified for a license due to a criminal history before the applicant incurs the examination fee.

Allowing license applicants to take the license examination before submitting their license application will save applicants money ($114 maximum for the application submission and fingerprinting).

Requiring license applicants to take a prelicensing course will cost applicants money if the course is not free.

Providing a new exemption from the adjuster examination for adjusters having a CCA designation will save money for those adjusters having the designation as they will no longer incur the testing fee of $56.

If a testing vendor has to lease additional testing space or has to secure new space to accommodate fingerprinting at the testing centers, then the vendor may have to break an existing lease, incurring a fee for such, or may have increased costs associated with renting additional space.

D. FISCAL COMMENTS:

Unless the department undertakes the fingerprinting process itself at the examination centers, it is not likely the department will derive any additional revenue from allowing fingerprinting at the testing locations. Even if the department does the fingerprinting at testing locations, $47 of the $64 fingerprinting fee is paid to the FDLE and the FBI. Accordingly, very little revenue will be generated per applicant. Also, allowing fingerprinting at testing locations is unlikely to increase the number of license applicants; it is primarily a convenience for applicants.

In addition, the following fiscal information was provided by the DFS:[18]

According to the department, two new Regulatory Consultant positions are needed due to the bill's provision allowing license testing before the license application is approved. The change in processing applications to allow testing prior to qualifying for a license will require applications to be processed at least twice. It is estimated that this change will increase the workload of the department's Division of Agent and Agency Services at least 20,000 applications the first year and then continue to increase the workload.

In addition, one new Examination Development Specialist (psychometrician) position is needed due to the bill's provisions relating to preparing and publishing information on license testing results. Although the department's testing vendor provides psychometric services for test development, the Bureau must have testing expertise on staff to analyze the data of the reports required in this bill and translate and report that information. It is essential that the department has staff with the knowledge of testing and psychometric science to work with the vendor in the development and revision of test items and forms that will better serve the citizens of Florida. Without this level of testing expertise on the Bureau staff, the results of the statistics may not properly impact the testing program as required by this bill.

The OPS non-recurring funding is needed for changes in contracts to enhance the department's technology systems and the contractor's cost of implementing this legislative change.

Enhancements to Agents Licensing Insurance System (ALIS)	$ 75,300
Enhancements to Agents and Agencies Licensing Functionality (AALF)	$ 29,040
Expense/Capital Equipment – non recurring	$ 15,729
Total Appropriation Required	**$120,069**

Enhancements are to modify contractors' programs to change the systems to allow for examination prior to qualification and provide statistical data on examinations. These enhancements have been identified as areas that would change the department's technology systems and the current agreement of services with Promissor, the testing vendor. To implement the provisions of the bill the department and its vendors will need at least six months for design, development and implementation.

Examination Administrator Vendor (Promissor)	
Examination Statistical Reports	$ 92,000
Enhancements to technology systems	$ 21,640

In order to pay for the expenses incurred by Promissor to make technological changes, the exam fees will remain at $56 per exam, rather than be reduced to $50 per exam (which had been anticipated through a rule change).

If the testing vendor has to acquire additional testing space to accommodate fingerprinting at the testing locations, it may incur additional rental fees. In such a case the testing vendor may pass the increased fees to the department because it cannot pass them to the applicant due to the testing fee being set by administrative rule.

If the department cannot find a private vendor to perform fingerprinting at its testing locations and has to do it in-house to comply with the bill, then the department will incur additional costs associated with the fingerprint processing. These costs include the purchase of 19 fingerprinting machines at $15,000 each (for a total of $285,000), the purchase of maintenance contracts on the machines (cost unknown), and the payment of wages to personnel hired to work the fingerprinting processing. The cost of hiring

[18] Fiscal Analysis by the DFS dated April 4, 2006.

personnel is unknown and indeterminate and in part, will depend on the demand for fingerprint processing at the testing location and the length of the testing. The bill does not include an appropriation to the department if it must do fingerprinting in-house. The department believes it will need additional resources to implement the bill, if it cannot find a private vendor to contract with to provide fingerprinting services at examination locations.[19]

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenue in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Insurance Committee considered the bill, adopted a strike-all amendment, and reported it favorably. The strike-all reworded the fingerprinting requirement in the original bill and added several provisions regarding license examinations and reporting. The added provisions:

- Allow an insurance license applicant to take their licensure exam prior to submitting their license application.
- Require license applicants to complete a pre-licensing course before taking a license exam. Current law does not require a pre-licensing course.
- Require the DFS to make demographic data available to the public via reports identifying the number of examinees, the pass/fail data of examinees, the average scores of examinees, reported by ethnicity and gender.
- Require the DFS to reasonably accommodate any disabled examinees.
- Require the DFS to issue a license within 15 days of the DFS's approval of an application if the applicant took the licensing exam prior to submitting his or her application.
- Allow an adjuster to be exempt from taking the adjuster license examination if he or she has the specified adjuster designation from the Association of Property and Casualty Claims Professionals. Current law allows an exemption from the license examination for adjusters with a different designation.

According to the department, implementation of the strike-all amendment will require three new FTEs and a recurring appropriation from trust fund moneys of $158,995 associated with the new FTEs. In addition, the department believes $233,709 in nonrecurring trust fund moneys will have to be spent in fiscal year 2006-2007 on technology improvements needed to implement the bill and on the examination contractor's cost of implementing the bill.

[19] Personal communication received from a representative of the Department of Financial Services, on file with the Insurance Committee.

The staff analysis was updated to reflect the changes made to the bill by the strike-all amendment.

CHAMBER ACTION

1 The Insurance Committee recommends the following:
2
3 **Council/Committee Substitute**
4 Remove the entire bill and insert:
5 A bill to be entitled
6 An act relating to insurance agents; amending s. 626.171,
7 F.S.; requiring the Department of Financial Services to
8 require certain examination centers to have fingerprinting
9 facilities; amending s. 626.211, F.S.; revising
10 circumstances under which the department must notify an
11 applicant about examinations; amending s. 626.221, F.S.;
12 expanding the authorized adjuster designations for
13 exemptions from adjuster license examinations; amending s.
14 626.231, F.S.; revising examination eligibility
15 requirements to require a prelicensing course; deleting
16 certain examination eligibility requirements; amending s.
17 626.261, F.S.; requiring the department to request
18 examinees to voluntarily report race and gender
19 information; requiring the department to provide certain
20 notice to examinees regarding the provision of race and
21 gender information; requiring the department to prepare,
22 publicly announce, and publish reports of examination
23 statistical information; providing report requirements;

24 providing an exception; requiring the department to retain
25 certain examination materials and information; requiring
26 the department to accommodate disabled examinees at
27 examinations; amending s. 626.291, F.S.; requiring the
28 department to issue a license for certain applicants
29 within a specified time period; providing an effective
30 date.
31
32 Be It Enacted by the Legislature of the State of Florida:
33
34 Section 1. Subsection (4) of section 626.171, Florida
35 Statutes, is amended to read:
36 626.171 Application for license as an agent, customer
37 representative, adjuster, service representative, managing
38 general agent, or reinsurance intermediary.--
39 (4) An application for a license as an agent, customer
40 representative, adjuster, service representative, managing
41 general agent, or reinsurance intermediary must be accompanied
42 by a set of the individual applicant's fingerprints, or, if the
43 applicant is not an individual, by a set of the fingerprints of
44 the sole proprietor, majority owner, partners, officers, and
45 directors, on a form adopted by rule of the department and
46 accompanied by the fingerprint processing fee set forth in s.
47 624.501. Fingerprints shall be used to investigate the
48 applicant's qualifications pursuant to s. 626.201. ~~The~~
49 Fingerprints shall be taken by a law enforcement agency or other
50 department-approved entity. <u>The department shall require all</u>
51 <u>designated examination centers to have facilities at which to</u>

52 take fingerprints at the time of an applicant's examination, and
53 fingerprints taken at such time shall be in lieu of the
54 applicant submitting fingerprints with the application.
55 Section 2. Subsection (2) of section 626.211, Florida
56 Statutes, is amended to read:
57 626.211 Approval, disapproval of application.--
58 (2) Upon approval of an applicant for license as agent,
59 customer representative, or adjuster who is subject to written
60 examination and who has not provided proof of passing such
61 examination, the department shall notify the applicant when and
62 where he or she may take the required examination.
63 Section 3. Paragraph (k) of subsection (2) of section
64 626.221, Florida Statutes, is amended to read:
65 626.221 Examination requirement; exemptions.--
66 (2) However, no such examination shall be necessary in any
67 of the following cases:
68 (k) An applicant for license as an adjuster who has the
69 designation of Accredited Claims Adjuster (ACA) from a
70 regionally accredited postsecondary institution in this state,
71 ~~or the designation of~~ Professional Claims Adjuster (PCA) from
72 the Professional Career Institute, or Certified Claims Adjuster
73 (CCA) from the Association of Property and Casualty Claims
74 Professionals whose curriculum has been approved by the
75 department and whose curriculum includes comprehensive analysis
76 of basic property and casualty lines of insurance and testing at
77 least equal to that of standard department testing for the all-
78 lines adjuster license. The department shall adopt rules
79 establishing standards for the approval of curriculum.

80 Section 4. Section 626.231, Florida Statutes, is amended
81 to read:
82 626.231 Eligibility for examination.--No person shall be
83 permitted to take an examination for license without having
84 first completed a prelicensing course as required by s. 626.7851
85 ~~until his or her application for the license has been approved~~
86 ~~and the required fees have been received by the department or a~~
87 ~~person designated by the department to administer the~~
88 ~~examination~~.
89 Section 5. Subsections (5), (6), (7), and (8) are added to
90 section 626.261, Florida Statutes, to read:
91 626.261 Conduct of examination.--
92 (5) The department shall request each examinee to report
93 the following information on a voluntary basis on the answer
94 sheet or application form or by other appropriate means:
95 (a) Race or ethnicity (African American, Caucasian,
96 American Indian, Asian, Hispanic, or other).
97 (b) Gender (male or female).
98
99 The department shall advise all examinees that they are not
100 required to provide this information, that they will not be
101 penalized for not providing this information, and that the
102 department will use the information provided exclusively for
103 research and statistical purposes and to improve the quality and
104 fairness of the examinations.
105 (6) No later than May 1 of each year, the department shall
106 prepare, publicly announce, and publish an examination report of
107 summary statistical information relating to each examination

108 administered during the preceding calendar year. Each
109 examination report shall show, with respect to each examination,
110 for all examinees combined, and separately by race or ethnicity,
111 by gender, and by race or ethnicity within gender:
112 (a) The number of examinees.
113 (b) The percentage and number of examinees who passed each
114 part.
115 (c) The percentage and number of examinees who passed all
116 parts.
117 (d) The mean scaled scores on each part.
118 (e) The standard deviation of scaled scores on each part.
119
120 No later than May 1 of each year, the department shall prepare
121 and make available on request an item report of summary
122 statistical information relating to each operational item on
123 each test form administered during the preceding calendar year.
124 The item report shall show the correct-answer rates and
125 correlations for each operational item for all examinees
126 combined, and separately for African-American examinees,
127 Caucasian examinees, American-Indian examinees, Asian examinees,
128 Hispanic examinees, and other examinees. The department is not
129 required to report separate statistical information for any
130 group or subgroup comprising fewer than 50 examinees.
131 (7) The department shall maintain, for a period of 3 years
132 after being prepared or used, all registration forms, test
133 forms, answer sheets, operational items and pretest items, item
134 analyses, and other statistical analyses relating to the
135 examinations.

136 (8) In administering the examinations, the department
137 shall make such accommodations for disabled examinees as are
138 reasonably warranted by the particular disability involved,
139 including the provision of additional time if necessary to
140 complete an examination or special assistance in taking an
141 examination.
142 Section 6. Subsection (1) of section 626.291, Florida
143 Statutes, is amended to read:
144 626.291 Denial, issuance of license.--
145 (1) Within 30 days after the applicant has completed any
146 examination required under s. 626.221, the department or its
147 designee shall provide a score report; and, if it finds that the
148 applicant has received a passing grade, the department shall
149 within such period notify the applicant and issue and transmit
150 the license to which such examination related. If it finds that
151 the applicant did not make a passing grade on the examination
152 for a particular license, the department or its designee shall
153 within this period provide notice to the applicant to that
154 effect and of its denial of the license. For those applicants
155 who have completed the examination prior to submitting the
156 license application, the department shall issue the license
157 applied for within 15 days after the department has approved the
158 application.
159 Section 7. This act shall take effect July 1, 2006.

HB 1425

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1425 Advisory Council on Condominiums
SPONSOR(S): Brutus
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1270

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Civil Justice Committee	5 Y, 0 N	Blalock	Bond
2) Business Regulation Committee	16 Y, 0 N	Livingston	Liepshutz
3) State Administration Appropriations Committee		Rayman	Belcher
4) Justice Council			
5)			

SUMMARY ANALYSIS

In 2004, the Legislature created the Advisory Council on Condominiums, in part to receive public input regarding issues of concern with respect to condominiums and recommendations for changes in the condominium law.

The bill provides that the Advisory Council on Condominiums must review part VI of ch. 718, F.S., concerning condominium conversions. The bill requires that the council submit a report to the Legislature by November 30, 2006, which evaluates whether such provisions provide adequate post-purchase protection for purchasers of condominium conversion properties, and that recommends any proposed legislation needed to improve the protection provided by part VI of chapter 718, F.S.

This bill has no fiscal impact on state or local governments.

The bill is effective upon becoming a law

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government -- This bill adds additional responsibilities for the Advisory Council on Condominiums.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Advisory Council on Condominiums

In 2004, the Legislature created the Advisory Council on Condominiums, in part to receive public input regarding issues of concern with respect to condominiums and recommendations for changes in the condominium law.[1] The issues the council is required to consider include, but are not limited to, the rights and responsibilities of the unit owners in relation to the rights and responsibilities of the association.[2] The council is also charged with recommending necessary improvements to the education programs offered by the Division of Florida Land Sales, Condominiums, and Mobile Homes and reviewing, evaluating, and advising the division about revisions and adoption of rules affecting condominiums.[3] The council is administratively assigned to the division within the Department of Business and Professional Regulation (DBPR).[4] The members of the council serve on a voluntary basis, but are entitled to receive per diem and travel expenses while on official business.[5]

The Roth Act

In 1980, the Legislature enacted Part VI of the Condominium Act (ch. 718, F.S.), also known as the Roth Act, which addresses condominium conversions.[6] The Roth Act is the result of a detailed report prepared by James S. Roth, the Director of what was formerly known as the Department of Professional Regulation, Division of Florida Land Sales and Condominiums. The Roth Report recommended that legislation be enacted to provide sufficient time and information so that tenants could make informed decisions about conversion of their rental facilities and protections to purchasing and nonpurchasing tenants.[7]

Part VI of the Condominium Act is devoted exclusively to condominiums which are created when existing improvements are converted to a residential condominium. This part of the Act provides protections to the existing renters in the building and to prospective purchasers of the converted condominium units. Renters are entitled to written notice of the proposed conversion and an option to extend their current lease. Each tenant has the right of first refusal to purchase the unit and the developer must provide basic background information to assist each tenant in evaluating the potential purchase.[8]

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[1] Section 5, ch. 2004-345, L.O.F.
[2] Section 718.50151(2)(a), F.S.
[3] Section 718.50151(2)(b) and (c), F.S.
[4] Section 718.50151(1), F.S.
[5] *Id.*
[6] Section 1, ch. 80-3, L.O.F.
[7] *Florida Condominium Law and Practice*, 3d ed., s. 9.1 (The Florida Bar, 2003).
[8] Peter M. Dunbar, *The Condominium Concept, A Practical Guide for Officers, Owners and Directors of Florida Condominiums*, 8th ed., s. 2.7, 33-34 (Aras Publishing 2003).

Section 718.616, F.S., requires each developer of a residential condominium to provide to new prospective purchasers and the ultimate owners of converted condominium units the same basic disclosures that are required in all condominium developments.[9] The developer must disclose the following information concerning the improvements:

- Date and type of construction;
- Prior use;
- Existence of any termite damage or infestation and whether it has been treated properly. A report from a certified pest control operator must substantiate the inspection.

The developer must also disclose the condition for each of the components listed in s. 718.616(3)(a), F.S. The components include the roof, structure, fireproofing and fire protection systems, elevators, heating and cooling systems, plumbing, electrical systems, swimming pools, seawalls, pavement and parking areas, and drainage systems. The developer must also disclose the components age, estimated remaining useful life, estimated current replacement cost, and structural and functional soundness.[10] The disclosure must be substantiated by attaching a copy of a certificate by a Florida licensed architect or engineer under seal.[11]

The developer is not required to certify that the replacement or renewal meets the requirements of the then-applicable building code. However, for purposes of funding a reserve account, this certification is required. The estimated current replacement cost of the component must be given as a total amount and as a per-unit amount based on each unit's proportional share of the common expenses.[12]

If the proposed condominium is situated within a municipality, the disclosure must include a letter from the municipality that acknowledges that it has been notified of the proposed conversion.[13]

Section 718.618, F.S., requires that once a conversion has taken place, the developer has to create financial safeguards for the condominiums. The developer must either: (1) establish reserve accounts for capital expenditures and deferred maintenance; (2) give implied warranties of fitness and merchantability for a period of three years beginning with the notice of intended conversion and continuing for three years, or the recording of the declaration to condominium and continuing for three years, or one year after owners other than the developer obtain control of the association, whichever occurs later; or (3) post a surety bond in an amount which would be equal to the total amount of all required reserve accounts payable to the association.[14]

A recent article on condominium conversions identified several issues regarding the conversion process.[15] The article maintained that the current statutory law offered little protection for consumers and required limited accountability for developers. The article noted that once the condominium association assumes control over the converted condominium, it may face hidden structural problems and problems regarding the reserve accounts. Another criticism identified was that the corporations created for the conversion may be limited liability companies with little assets to be attached when problems arise after the conversion.[16]

Compliance with s. 718.618, F.S., does not shield the developer from all liability in connection with the components involved. The statute does not foreclose other legal actions based upon negligence, misrepresentation, strict liability, or similar liability actions.[17]

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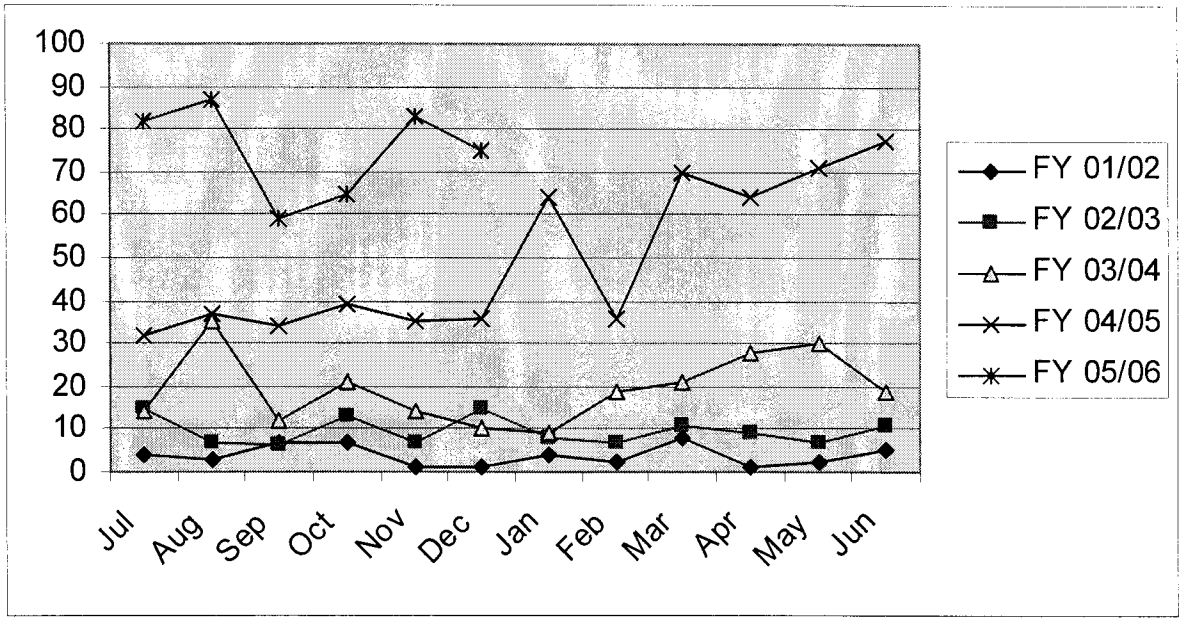
[9] Section 718.616, F.S.; Rule 61B-24.004(1)(a), F.A.C.
[10] Section 718.616(3)(b), F.S.
[11] *Id.*
[12] Section 718.616(3)(b)3., F.S.
[13] Section 718.616(4), F.S.
[14] Section 718.618, F.S.
[15] Paola Iuspa-Abbott, "Condo Conversion Blues," *Daily Business Review,* 15 Aug. 2005, A8.
[16] *Id.*
[17] *Supra* at note 8, s. 9.50.

The Division of Florida Land Sales, Condominiums, and Mobile Homes in the DBPR indicated the number of conversions in the table below.



Effect of Bill

The bill directs the Advisory Council on Condominiums to review part VI of ch. 718, F.S., concerning condominium conversions. The bill requires the council to submit a report to the Legislature by November 30, 2006. The report must evaluate whether such provisions provide adequate post-purchase protection for purchasers of condominium conversion properties and recommend any proposed legislation needed to improve the protection provided by part VI of ch. 718, F.S.

In particular, the bill requires that the report examine ss. 718.616 and 718.618, F.S., as they relate to:

- Whether the disclosures required by s. 718.616, F.S., provide adequate information to the purchaser; whether more specific guidelines regarding the contents of the reports should be established; and whether the creation of privity or potential liability between persons who certify such disclosure reports and the unit owners should be addressed; and
- Whether the provisions of s. 718.618, F.S., which require developers to fund reserve accounts or alternatives to such accounts, are adequate or should be modified.

C. SECTION DIRECTORY:

Section 1. Requires the Advisory Council on Condominiums to review certain provisions related to protections of condominium conversions, and requiring a report to the Legislature.

Section 2. Provides that the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

1 A bill to be entitled
2 An act relating to the Advisory Council on Condominiums;
3 requiring the Advisory Council on Condominiums to review
4 certain provisions related to protections for purchasers
5 of condominium conversions; requiring a report to the
6 Legislature; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. (1) The Advisory Council on Condominiums,
11 created by s. 718.50151, Florida Statutes, shall review part VI
12 of chapter 718, Florida Statutes, concerning condominium
13 conversions, and shall submit a report to the Legislature by
14 November 30, 2006, which evaluates whether such provisions
15 provide adequate postpurchase protection for purchasers of
16 condominium conversion properties and recommends any proposed
17 legislation needed to improve the protection provided by part VI
18 of chapter 718, Florida Statutes.
19 (2) The report must examine the existing provisions,
20 particularly ss. 718.616 and 718.618, Florida Statutes, as they
21 relate to the following issues:
22 (a) Whether the disclosures required by s. 718.616,
23 Florida Statutes, provide adequate information to the purchaser;
24 whether more specific guidelines regarding the contents of such
25 reports should be established; and whether the creation of
26 privity or potential liability between persons who certify such
27 disclosure reports and the unit owners should be addressed; and
28 (b) Whether the provisions of s. 718.618, Florida

29 Statutes, which require developers to fund reserve accounts or
30 alternatives to such accounts, are adequate or should be
31 modified.
32 Section 2. This act shall take effect upon becoming a law.

HB 1435

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1435 Division of Emergency Management of the Department of Community Affairs
SPONSOR(S): Harrell
TIED BILLS: **IDEN./SIM. BILLS:** SB 1888

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Governmental Operations Committee	6 Y, 0 N	Brown	Williamson
2) State Administration Appropriations Committee		Dobbs	Belcher
3) State Administration Council			
4)			
5)			

SUMMARY ANALYSIS

This bill provides for a codified direct operational relationship between the Governor and the Division of Emergency Management in carrying out the responsibilities of Chapter 252, F.S., laws related to Emergency Management. The bill provides the division with autonomy for matters involving personnel, purchasing, and budget.

The bill appears to have no fiscal impact.

The bill is effective July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires the Division of Emergency Management to enter into a service agreement with the Department of Community Affairs.

B. EFFECT OF PROPOSED CHANGES:

Structure of Executive Branch

Article IV, Section 1 of the Florida Constitution vests the Governor with supreme executive power. Section 20.18, F.S., creates the Department of Community Affairs (DCA) and establishes the Division of Emergency Management (DEM) as one of the department's units.[1] The State Emergency Management Act[2] also serves as an establishing clause for the DEM. Chapter 252, F.S., tasks the DEM with coordinating emergency management efforts to ensure effective preparation and use of the state workforce, state resources, and facilities of the state and nation in dealing with any emergency that may occur.[3]

Statutorily, the operational and administrative chain of command typically flows from the Governor through the Secretary of the Department of Community Affairs to the Director of the Division of Emergency Management. However, under Chapter 252, F.S., the Governor is responsible for meeting the dangers presented to this state and its people by emergencies.[4] In the event of an emergency beyond the capabilities of local authorities, the Governor may assume direct operational control over all or any part of the emergency management functions within this state. The Governor is authorized to delegate such powers as she or he may deem prudent.[5]

Chapter 252, F.S., assigns responsibility to the Division of Emergency Management for maintaining a comprehensive statewide program of emergency management. This program includes:

- Preparation of a comprehensive statewide emergency management plan;
- Adopting standards and requirements for county emergency management plans;
- Ascertaining the requirements for equipment and supplies for use in an emergency;
- Coordinating federal, state, and local emergency management activities in advance of an emergency; and
- Using and employing the property, services, and resources within the state in accordance with the Florida Emergency Management Act.[6]

In an emergency that is beyond the capability of local authorities, the Governor determines the need to declare a state of emergency. This declaration takes the form of an Executive Order that describes the emergency condition, issues orders, assigns missions, and may delegate certain authority.[7]

For example, Executive Order 05-219[8] declared a state of emergency for Hurricane Wilma. As part of the Executive Order, the Governor designated the Director of the DEM as the State Coordinating Officer for the duration of the emergency. The Director was authorized to act as the Governor's

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[1] Section 20.18(2)(a), F.S.
[2] Chapter 252, F.S.
[3] Section 252.32(2), F.S.
[4] See generally s. 252.36, F.S.
[5] Section 252.36(1)(a), F.S.
[6] Section 252.35, F.S.
[7] Section 252.36, F.S.
[8] Available online here: http://sun6.dms.state.fl.us/eog_new/eog/orders/2005/October/05-219-wilma.pdf.

authorized representative and instructed to confer with the Governor to the fullest extent possible. The Director was specifically authorized to:

- Activate the Comprehensive Emergency Management Plan;
- Invoke and administer the Statewide Mutual Aid Agreement;
- Invoke and administer the Emergency Management Assistance Compact;
- Seek direct assistance from any and all agencies of the United States Government as may be needed to meet the emergency;
- Distribute any and all supplies stockpiled to meet the emergency;
- Direct all state, regional and local government agencies, including law enforcement agencies, to identify needed personnel and place them under the direct command of the State Coordinating Officer to meet the emergency; and
- Perform other duties relating to the management of the emergency.

As a result of this and other executive orders, the Governor and the Director of DEM (acting as the State Coordinating Officer) have a direct operational link when operating under an executive order declaring an emergency.

Proposed Changes

The bill requires the Director of the DEM to be appointed by and serve under the direct oversight of the Governor in carrying out the responsibilities of chapter 252, F.S. The bill makes the DEM a budget entity separate from the DCA, with complete autonomy in matters involving personnel, purchasing, and budget while remaining an established unit of the DCA.

The bill requires the DEM to enter into a service agreement with the DCA for "professional, technological, and administrative support services." The bill also requires the DEM to collaborate and coordinate with the department on non-emergency response matters such as recovery programs, grant programs, mitigation programs, and emergency matters relating to comprehensive plans.

C. SECTION DIRECTORY:

Section 1 amends s. 20.18, F.S., to operationally segregate the DEM from the DCA except for administrative purposes.

Section 2 provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The DCA reports that the bill will have no fiscal impact, as the changes "codify the existing relationship."[9]

Section 252.371, F.S., establishes the Emergency Management, Preparedness, and Assistance Trust Fund administered by the Department of Community Affairs. The DEM currently performs administration of this trust fund within the DCA. This bill does not appear to conflict with section 252.371, F.S., since the DEM will remain statutorily a unit of the DCA. Further, the bill specifies that the DEM will collaborate and coordinate with the DCA on such matters as grant programs. Emergency management grants and aids to local governments and non-state entities as well as other related programs are funded through this trust fund.

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:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill introduces a fundamental structural change that does not generally fit within the executive branch structure required by s. 20.14, F.S. That section provides that departments are the "principle administrative unit[s] of the executive branch."[10] Divisions are subsequently defined as "principle unit[s] of the department." Given the Department's statement that the changes have no substantive effect and merely "codify the existing relationship,"[11] if the existing relationship does not violate any state or federal statute, it is unclear why this deviation from chapter 20, F.S., is necessary.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

None.

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[9] *2006 Bill Policy Analysis, HB-1435*, Florida Department of Community Affairs.
[10] Section 20.14(1), F.S.
[11] *2006 Bill Policy Analysis, HB-1435*, Florida Department of Community Affairs.

1 A bill to be entitled
2 An act relating to the Division of Emergency Management of
3 the Department of Community Affairs; amending s. 20.18,
4 F.S.; providing that the director of the Division of
5 Emergency Management shall be appointed by and serve under
6 the oversight of the Governor; providing that the division
7 shall be a separate budget entity and not subject to the
8 control, supervision, or direction of the Department of
9 Community Affairs in matters involving personnel,
10 purchasing, and the budget of the division; authorizing
11 the division to enter into a service agreement with the
12 department for professional, technological, and
13 administrative support services; requiring the division to
14 collaborate and coordinate with the department on all
15 nonemergency response matters; providing an effective
16 date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Paragraph (a) of subsection (2) of section
21 20.18, Florida Statutes, is amended to read:
22 20.18 Department of Community Affairs.--There is created a
23 Department of Community Affairs.
24 (2) The following units of the Department of Community
25 Affairs are established:
26 (a) Division of Emergency Management. <u>The director of the</u>
27 <u>Division of Emergency Management shall be appointed by and shall</u>
28 <u>serve under the oversight of the Governor in carrying out the</u>

29 responsibilities of chapter 252. The division shall be a
30 separate budget entity and not subject to the control,
31 supervision, or direction of the department in matters involving
32 personnel, purchasing, and the budget of the division. The
33 division shall enter into a service agreement with the
34 department for professional, technological, and administrative
35 support services. The division shall collaborate and coordinate
36 with the department on all nonemergency response matters,
37 including, but not limited to, disaster recovery programs, grant
38 programs, mitigation programs, and emergency matters related to
39 comprehensive plans.
40 Section 2. This act shall take effect July 1, 2006.

HB 7153

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7153 PCB EDTB 06-02 Financial Entities Licensing
SPONSOR(S): Economic Development, Trade & Banking Committee
TIED BILLS: **IDEN./SIM. BILLS:** SB 2744

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee	13 Y, 0 N	Olmedillo	Carlson
1) State Administration Appropriations Committee		Rayman	Belcher
2) Commerce Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

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

The bill makes editorial changes, adjusts cross-references, reorganizes certain sections and removes superfluous language to achieve uniformity, clarification and streamline the processes.

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

- Mandated electronic filing of required forms, documents, or files with a provision for hardship situations;
- Clarification that receipt of the appropriate fee is a condition of new and renewal license application completion and that grounds for disciplinary action exists if payment of the fee fails to clear;
- Revision of fingerprint card processing;
- Clarification of when a change in licensee control will trigger the need for a new license;
- Requirements for financial institutions to qualify for an exemption;
- Revision of testing procedures and fees;
- Increase in the fee for a credit check of a loan applicant from $10 to $25;
- Elimination of the registration fee ($30) for Canadian agents if the Canadian Dealer is registered. (Florida is following the national trend, which is not to require registration of Canadian agents.);
- Approval for branch application license;
- Revised accounting standards;
- A reconciliation of conflicts between the 2002 amendments to the Probate Code and provisions of the Banking Code relating to safe-deposit boxes; 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 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 from applicants. Eliminating the registration fee for Canadian agents will result in a recurring loss of $53,250 in General Revenue.

The bill provides an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

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

Ensure Lower Taxes - The bill allows for an increase in the fee for a credit check of a loan applicant from $10 to $25. In addition, it grants the Office rulemaking authority to charge a fee, not to exceed $100 for electronic testing.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

The 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.[1] The Office is responsible for all activities of the Commission relating to the regulation of financial institutions, finance companies, securities industries, and money transmitters.[2]

Mortgage brokers and mortgage lenders are regulated under the provisions of ch. 494, F.S. Chapter 516, F.S., regulates consumer finance loans, which are loans of $25,000 or less and for which the lender charges an interest rate of 18 percent or greater. Securities transactions are regulated under 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 advisor and who meet the statutory requirements for compensation. The Office also has regulatory authority over the following types of retail installment sales covered by 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), and home improvement contracts (financing for home improvement through home improvement contracts). Presently, if a mortgage lender fails to timely pay an insurance premium of a property owner, and the payment is not more than 90 days overdue, the insurer must reinstate the insurance policy retroactive to the date of cancellation under the provisions of s. 501.137, F.S. The lender must reimburse the property owner for any penalty or fees imposed by the insurer and paid by the property owner to reinstate the policy. If the premium payment is more than 90 days overdue, or if the insurer refuses to reinstate the policy, the lender must pay the difference between the cost of the previous insurance policy and a new, comparable policy for 2 years. There is no provision for the recovery of attorney's fees and costs by the property owner.

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

The Office currently licenses over 380,000 individuals and businesses in the areas of securities and finance.

Over the past five years, the number of persons seeking licensure through the Office has significantly increased. The number of staff to process applications and renewals, however, has remained constant.

The most significant increases have been in the finance area.

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[1] 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.

[2] See s. 20.121(3), F.S.

For example:

	FY 2000-01	FY 2004-05	Increase
Mortgage Broker Applications	4,960	19,710	297%
Active Mortgage Broker Licenses	34,128	71,729	110%
Active Finance Licenses (All types)	52,281	90,256	73%

To keep pace with demand, the Office's licensing functions need to be streamlined and technology needs to be used to a greater extent. This bill will fulfill both of these goals.

Effects of proposed changes

GENERAL LICENSING PROVISIONS APPLICABLE TO MULTIPLE CHAPTERS

1) Electronic Filing of Forms and Fees. The bill grants the Office 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. Without requiring the industries to use the technology the Office must maintain dual processes, one for paper filings and another for electronic filings.

2) Fee. Provides that applications are not deemed received until all required fees are received. Authorizes disciplinary action if fees paid with bad check.

   The application fees are as follows:
   - Mortgage business schools $500 (current)
   - Mortgage business $425 (current)
   - Mortgage brokers $200 (current)
   - Mortgage business branch offices $225 (current)
   - Mortgage lenders $575 (current)
   - Correspondent mortgage lenders $500 (current)
   - Mortgage lenders' branch offices $325 (current)
   - Transfer of lender's license $500 (current)
   - Consumer finance loans $625 (current)
   - Motor vehicle retail installment seller or operator, retail installment transactions, sales finance company, home improvement finance seller, branch of such businesses $175 (current)
   - Money transmitters fee not to exceed $1,000 (current). Renewal fee, not to exceed $500 (current)

3) Required documents and destruction of records. Authorizes the Commission to prescribe rules for the destruction of records maintained by licensees. There has been at least one instance of a licensee disposing of intact records by placing them in a dumpster. The Office seeks to prescribe the proper method of disposing of records to protect sensitive consumer information.

   All documents required by Commission rule, including training curriculum and materials from mortgage business schools, must be submitted at the time the applicant submits the application or recertification.

4) Paper Permits. Eliminates requirement that licensed businesses display their permits. License information is available via the Office's website. (Chapters 494, 516, and 520.)

5) "Control person and controlling interest". Provides a definition of "control person" and "controlling interest" as follows:

   "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.

"Controlling interest" means 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.

6) Current Information about Licensees. Requires licensees to keep the application information current. (Chapters 494, 516, 520, and 560)

7) Background checks. Provides authority to inquire into the backgrounds of applicants, officers, directors, and other persons with the power to direct the management of the licensee. (Chapters 494, 516, and 520)

8) 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% 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 Office. It provides that fingerprint processing costs may be borne by the Office, the employer, or the person subject to the background check. It authorizes the Department of Law Enforcement to submit monthly invoices for fingerprint processing.

9) Change in Control. The bill clarifies the procedures with regard to change in control of a business. Currently, a licensee must notify the Office of any change in the form of business or any change in the Officers or directors. The bill authorizes the Office to obtain background information from persons who have not previously undergone review by the Office. 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 Office. (Chapters 494, 516, 520, and 560).

10) Exemptions.
The bill provides that in order to be exempt from the chapter requirements, a state or federal chartered bank, trust company, savings and loan, savings bank, credit union or bank holding company must be regulated under the laws of any state or the federal government of the United States. Banks, bank holding companies, and their subsidiaries that are not regulated by the federal or state government of the United States will no longer qualify for exemptions.

The bill also clarifies that there is no licensing requirement for wholly-owned subsidiaries of state or federal chartered banks or savings and loans whose sole activity is to distribute the lending programs of state or federal chartered banks.

11) Licensing requirements:
The bill requires permit and licensing from the Office, unless specifically exempt, for the following:

- 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
- Money transmitters.

OVERVIEW OF FEES

1. Mortgage Brokerage Test. Authorizes the Office 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 Office 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.

In 2004, the Office participated in a competitive procurement with the Department of Financial Services to secure a vendor for this test in anticipation of last year's bill passing. The three responses for the mortgage broker test were $42, $43 and $53. The State of North Carolina recently entered into a contract with a vendor to provide a similar test at a cost of $100. It is estimated the cost of the computerized test will be $60-75 per test based on the previous bids and the experience of North Carolina.

2. Investigation Fee – Consumer Finance. Increases the 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 7-1-1994.

3. Registration Fee - Canadian Securities Agents. Eliminates the registration fee ($30) for Canadian agents if the Canadian Dealer is registered. Florida is following the national trend, which is not to require registration of Canadian agents. Other states:

- 19 states: no filing required/exemption self-executing/no fees collected by state
- 19 states: notice filing required for the dealer only/no fees collected by state
- 7 states: require registration of both dealer and agents/initial application and renewal fees apply
- 5 states: exemption under consideration

4. Investment Adviser Registration through IARD. 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 (680) 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.

5. Fingerprinting. Currently the Office may require each Officer, director or ultimate equitable owner to submit a fingerprint card. The bill expands this requirement to include a control person, member, partner or joint venturer of the applicant. It is not possible to estimate the number of individuals that would be impacted by the requirement. The cost per person would be established at the cost charged by FDLE, which is currently $47 each for processing criminal history checks.

INDUSTRY SPECIFIC ISSUES

Chapter 494 - Mortgage Brokerage and Lending

1. Uniform Forms. Authorizes the Commission to adopt by rule uniform license application and renewal forms for mortgage brokerage businesses, lenders, and individuals.

2. Disciplinary Action. 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. These provisions are necessary in order to adopt the uniform forms.

3. Continuing Education. 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.

4. Principal Representative. 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.

5. 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 Office under this chapter.

6. Mortgage Business Schools. Requires permitted mortgage business schools to electronically report the names of students who have successfully completed required training courses. Clarifies the renewal process by specifying the renewal cycle. The permit expires on September 30th 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 office 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.

7. Transfer applications. As of October 1, 2006, new requirements are mandated for transfer applications on or after that date. The requirements are as follows: 1) To provide proof that the applicant's principal representative qualifies for waiver; and 2) An applicant's principal representative must pass all testing requirements for lenders.

Chapter 516 – Consumer Finance

1. Liquid Assets. Clarifies that applicants must provide evidence of liquid assets of at least $25,000. (See amendments to s. 516.03, F.S.) The failure to meet this requirement is currently grounds for denial of licensure and disciplinary action under s. 516.07(1)(b).

Chapter 517 – Securities

1. Branch Office. Amends the definition of "branch office" to conform to uniform federal standard recently adopted by the Securities and Exchange Commission.

2. Registration. Amends s. 517.12, F.S., to remove the requirement that the registration form be verified under oath.

3. Securities Guaranty Fund. Amends ch. 517, F.S., to authorize the Office to prescribe rules for the procedures, form of submissions and guidelines of notices and claims.

4. Payment from the Fund. Requires a claimant who satisfies a judgment described in s. 517.131(3)(a), F.S., to reimburse the fund all amounts paid to the claimant on the claim and gives the Commission rulemaking authority to specify the procedures for complying with this section.

5. Branch Offices - Renewal Cycle. Changes renewal deadline for branch offices from March 31st to December 31st to allow renewal fees to be submitted through NASD.

6. Uniform Forms. Authorizes the Commission to adopt by rule uniform forms that have been approved by the Securities and Exchange Commission. A list of uniform forms is provided in the bill (e.g., Uniform Branch Office Form). These provisions are needed to address recent concerns by the Joint Administrative Procedures Committee.

7. Canadian Dealers. Revises the registration process for Canadian Dealers and eliminates the registration requirements for Canadian agents under certain conditions.

8. Investment Advisers. Requires filings through Investment Adviser Registration Depository (IARD) for state registered Investment Advisers.

Chapter 560 – Money Transmitters

1. Control of money transmitter. Provides that a person has control over a money transmitter if the individual, partnership, corporation, trust, or other organization: 1) 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 circumstances; 2) The Office determines, after notice and opportunity for hearing, that the person directly or indirectly exercises a controlling influence over the activities of the money transmitter.

2. Permissible investments. Clarifies that the permissible investments mandated by the section must be calculated in accordance with accounting principles generally accepted in the United States.

3. Registration terms. Provides for a 24-month renewal of a registration by furnishing information and fees required by Commission rule. Currently, the section requires the Office to renew registration upon the receipt of a completed renewal form and payment of the nonrefundable fee.

Miscellaneous

1. Safe Deposit Boxes. Reconciles conflicts between the 2002 amendments to the Probate Code and provisions of the Banking Code relating to safe-deposit boxes.

2. Escrow Accounts. Provides an award of attorney's fees and costs if, as the result of neglect, a mortgage lender fails to pay taxes or insurance premiums from an escrow account, and subsequently refuses to pay the difference between a lapsed insurance policy and a new one.

3. Appropriation. Provide an appropriation amount for the Fiscal Year 2006-2007 from the Regulatory Trust Fund to the Office of Financial Regulation for the purpose of implementing the provisions of s. 494.033(2)(d), F.S., for third party administration of the mortgage broker test.

C. SECTION DIRECTORY:

Section 1: Amends s. 494.001, F.S., to create a definition for "control person."

Section 2: Amends s. 494.0011, F.S., providing the ability for the Commission of Financial Services to mandate electronic filings; allowing alternate means for hardships; and providing that the granting of a license must be pursuant to s. 120.60, F.S.

Section 3: Amends s. 494.0016, F.S., prescribing rules for the destruction of records.

Section 4: Amends s. 494.0029, F.S., establishing provisions for received applications and permits.

Section 5: Amends s. 494.00295, F.S., providing clarification and waiver relating to continuing education programs.

Section 6: Amends s. 494.003, F.S., providing exemptions from mortgage broker provisions for certain institutions.

Section 7: Amends s. 494.0031, F.S., relating to licensure as a mortgage brokerage business.

Section 8: Amends s. 494.0032, F.S., relating to renewal of mortgage business license or branch office license.

Section 9: Amends s. 494.0033, F.S., relating to mortgage broker's license.

Section 10: Amends s. 494.0036, F.S., relating to mortgage brokerage business branch offices.

Section 11: Amends s. 494.0039, F.S., relating to mortgage brokerage business principal place of business requirement.

Section 12: Amends s. 494.004, F.S., relating to requirements of mortgage brokerage licensees.

Section 13: Amends s. 494.0041, F.S., relating to administrative penalties and fines for licenses and permits.

Section 14: Amends s. 494.006, F.S., providing exemptions relating to mortgage lenders.

Section 15: Amends s. 494.0061, F.S., to provide licensing, exemptions, fingerprinting, and testing requirements for mortgage lenders.

Section 16: Amends s. 494.0062, F.S., relating to license requirements for correspondent mortgage lenders.

Section 17: Amends s. 494.0064, F.S., relating to educational requirements of mortgage lender's license.

Section 18: Amends s. 494.0065 F.S., relating to transfer applications.

Section 19: Amends s. 494.0066, F.S., relating to mortgage brokerage branch office licensing.

Section 20: Amends s. 494.0067, F.S., relating to continuing education requirements for licensees.

Section 21: Amends s. 494.0072, F.S., relating to disciplinary action for transmission of funds which fail to clear.

Section 22: Amends s. 494.00721, F.S., relating to mortgage lender net worth.

Section 23: Amends s. 501.137, F.S., relating to mortgage lender's payment of insurance premiums from escrow funds.

Section 24: Amends s. 516.01, F.S., to create a definition of "control person".

Section 25: Amends s. 516.03, F.S., relating to consumer finance loan applications.

Section 26: Amends s. 516.031, F.S., increasing the fee for a credit check for a loan applicant.

Section 27: Amends s. 516.05, F.S., relating to consumer finance loan licensing, removing a requirement for the Office to return fees under certain circumstances.

Section 28: Amends s. 516.07, F.S., providing violations for consumer finance loan permit funds failing to clear the applicant's financial institution.

Section 29: Repeals s. 516.08, F.S., relating to posting licenses.

Section 30: Amends s. 516.12, F.S., relating to the mandated destruction of accounts and records by consumer finance loaners.

Section 31: Amends s. 516.19, F.S., relating to penalties.

Section 32: Amends s. 517.021, F.S., to provide a new definition of "branch office."

Section 33: Amends s. 517.051, F.S., relating to accounting principles for securities transactions.

Section 34: Amends s. 517.061, F.S., relating to exempt securities transactions.

Section 35: Amends s. 517.081, F.S., relating to accounting principles within registration procedure for securities transactions.

Section 36: Amends s. 517.12, F.S., relating to fingerprinting provisions, renewing branch office registrations, and revising requirements relating to activities of Canadian dealers.

Section 37: Amends s. 517.131, F.S., relating to submissions, notices, and claims from the Securities Guaranty Fund.

Section 38: Amends s. 517.141, F.S., relating to payment from the Securities Guaranty Fund; providing the Commission with rule making authority for compliance.

Section 39: Amends s. 517.161, F.S., relating to suspension of registration for a securities transactions dealer.

Section 40: Amends s. 520.02, F.S., to provide a definition for "control person".

Section 41: Amends s. 520.03, F.S., relating to applications for motor vehicle retailer licenses.

Section 42: Amends s. 520.31, F.S., to provide a definition for "control person".

Section 43: Amends s. 520.32, F.S., relating to applications for retail installment sales licenses.

Section 44: Amends s. 520.52, F.S., relating to applications for installment sales finance licenses.

Section 45: Amends s. 520.61, F.S., to provide a definition for "control person."

Section 46: Amends s. 520.63, F.S., relating to applications for home improvement sales finance licensees.

Section 47: Amends s. 520.994, F.S., providing exemptions for financial hardship for applications for retail installment sales.

Section 48: Amends s. 520.995, F.S., relating to disciplinary action for funds that fail to clear an applicant's financial institution.

Section 49: Amends s. 520.997, F.S., relating to destruction of books, accounts and records retained by a retail installment sales licensee.

Section 50: Amends s. 520.999, F.S., relating to requirements of licensees, waivers, and providing a definition for "control interest."

Section 51: Amends s. 537.009, F.S., relating to destruction of books, accounts, and records retained by title loan companies.

Section 52: Amends s. 559.9232, F.S., relating to correction of cross references.

Section 53: Amends s. 560.105, F.S., relating to electronic forms for money transmitters.

Section 54: Amends s. 560.114, F.S., relating to disciplinary actions for money transmitters whose application fee fails to clear the financial institution.

Section 55: Amends s. 560.121, F.S., relating to destruction of books, accounts, and records retained by title money transmitters.

Section 56: Amends s. 560.126, F.S., relating to significant events and notice required for money transmitters.

Section 57: Amends s. 560.127, F.S., relating to control of money transmitters.

Section 58: Amends s. 560.205, F.S., relating to fingerprinting for money transmitters.

Section 59: Amends s. 560.207, F.S., relating to renewal of registration for money transmitters.

Section 60: Amends s. 560.210, F.S., relating to permissible investments.

Section 61: Amends s. 560.211, F.S., relating to money transmitters' records.

Section 62: Amends s. 560.305, F.S., gives Commission rulemaking authority to require certain information from applicant.

Section 63: Amends s. 560.306, F.S., relating to fingerprinting for check cashers.

Section 64: Amends s.560.308, F.S., relating to registration renewal for check cashers.

Section 65: Amends s. 560.310, F.S., relating to providing rule making for Commission for records of check cashers.

Section 66: Amends s. 560.403, F.S., relating to reinstatement of application for deferred presentment providers.

Section 67: Amends s. 655.935, F.S., relating to the initial opening of a safe deposit box.

Section 68: Amends s. 655.936, F.S., relating to delivery of safe deposit box contents.

Section 69: Amends s. 655.937, F.S., relating to access to a safe deposit box leased or rented in two or more names.

Section 70: Amends s. 733.6065, F.S., relating to opening of a safe deposit box.

Section 71: Appropriates $700,515 to the Office.

Section 72: Provides an effective date of October 1, 2006, for the bill.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

	FY 2006-07	FY 2007-08

1. Revenues:

Recurring		
Regulatory Trust Fund		
Mortgage Broker Test Fees	$ 700,515	$1,401,030
General Revenue		
Canadian Securities Agent Registration Fees	($ 53,250)	($ 53,250)

(Canadian Securities agents will no longer be required to register – 1775 x $30 annually)

2. Expenditures:

	FY 2006-07	FY 2007-08
Recurring		
Regulatory Trust Fund		
OPS (Mortgage Broker Test)	$ 700,515	$1,401,030
Non-Recurring	None	

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

FY 2006-07	FY 2007-08
$ 700,515	$1,401,030

It is not possible to predict the offsetting benefit to the private sector of allowing quicker entry into business due to more frequent testing and immediate scoring. However, it is estimated that each additional day to get registered costs the individual $98.63 in income (average salary of $36,000 divided by 365 days = $98.63). During first quarter of fiscal year 05-06, an average of 2,339 applicants took the test each month, so each 1-day delay costs a total of $230,696 in lost wages, or $6,920,867 for the 30-day delay currently between tests. It is also anticipated more test sites would be available than currently, reducing the applicants' travel expense to take the test.

IARD Registration

The proposed language will require all state-registered investment advisers (IAs) to register via the Investment Adviser Registration Depository (IARD), a nationwide electronic filing system operated by the National Association of Securities Dealers (NASD). 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 state application fee of $200 annually. Revenues to the State will be unchanged. Florida currently has 1100 state-registered IAs, of which 680 have already converted their information to IARD and paid the initial fee. The remaining 420 will be required to file (total cost $63,000) and all 1100 will be required to pay $70 annually, a total of $77,000. Additionally, the Office received 182 new applications for state-registered IAs last year, of which 150 were approved. This represents an additional cost to the industry of $27,300 (182 x $150) in their first year and $10,500 (150 x $70) on an on-going basis. Filing the information with IARD allows the Office to share registration information with other states and federal authorities related to state-registered IAs, and allows faster processing of applications and "one-stop" filing for the industry.

Canadian Dealers and Agents
The fees will remain unchanged for Canadian dealers, although the registration process will change. However, the Canadian agents currently registered with the State, will no longer be required to register. Currently there are 1775 Canadian agents registered. This will represent a savings to them of $30 each, or $53,250, with a resulting loss to the State General Revenue Fund.

Increase in Maximum Fee Permitted to Be Charged by Lender
Language is being proposed to allow an increase in the fee that a lender may charge the customer as an investigative fee for a consumer finance loan from the current $10 to $25 (ss. 516.03(3), F.S.). Potential volume of customers affected is not known.

Fee Increase for Credit Check of a Loan Applicant
The bill authorizes an increase in the fee for a credit check of a loan applicant from $10 to $25. The Office has not evaluated the effects of this increase.

D. FISCAL COMMENTS:

Mortgage Broker Testing

Under current statute, the Office only administers the Mortgage Broker test once a month. Under the proposed language, the Office may promulgate 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. Under the proposal, the applicant could reschedule an immediate retake if necessary, rather than waiting until the following month to retake the test. This would allow them to obtain their mortgage broker license more quickly and enter business without unnecessary delays.

During Fiscal Year 2004-05, a total of 20,756 applicants took the test. The possible range based on $60 to $75 per test is $1,245,360 to $1,556700, with an average cost of $67.50 x 20,756 equal to $1,401,030 (reduced to $700,515 in the first year based on a January 1 effective date). It is anticipated the fee will be established equal to the cost charged by the vendor for the test. Thus, the anticipated revenue and expenditures should offset each other. The issue will be self-funding and not produce any excess revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULEMAKING AUTHORITY:

The bill gives the Commission rulemaking authority to prescribe requirements and procedures for obtaining a technological or financial hardship exception relating to electronic filing of forms; rulemaking authority to include guidelines for the destruction, as well as, retention of certain records; the authority to charge for the processing of fingerprint cards; and authority to utilize a third party for the submission of fingerprint cards and fees by electronic means.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled
2 An act relating to financial entities and transactions;
3 amending s. 494.001, F.S.; defining the term "control
4 person"; amending s. 494.0011, F.S.; authorizing the
5 Financial Services Commission to require electronic
6 submission of forms, documents, or fees; providing a
7 limitation; authorizing the commission to adopt rules
8 accommodating a technological or financial hardship;
9 requiring that a grant or denial of a license be in
10 accordance with ch. 120, F.S.; amending s. 494.0016, F.S.;
11 authorizing the commission to prescribe requirements for
12 destroying books, accounts, records, and documents;
13 amending s. 494.0029, F.S.; requiring that certain
14 entities who offer or conduct mortgage business training
15 obtain a permit; providing requirements and procedures for
16 obtaining a permit; specifying that permits are not
17 transferable or assignable; providing for expiration and
18 recertification of permits; authorizing permit fees;
19 requiring that curriculum, training, and training
20 materials be available for inspection; requiring
21 electronic notification to the office of persons who have
22 successfully completed certain education requirements;
23 requiring the commission to adopt rules; amending s.
24 494.00295, F.S.; revising professional education
25 provisions to apply to continuing education; providing
26 requirements; waiving such requirements for license
27 renewals for certain persons under certain circumstances;
28 amending s. 494.003, F.S.; revising the list of entities

29 exempt from certain mortgage broker licensure
30 requirements; amending s. 494.0031, F.S.; requiring
31 licensure of mortgage brokerage businesses; revising
32 requirements and procedures for issuing licenses;
33 providing duties and authority of the commission and
34 office; providing duties of the Department of Law
35 Enforcement; specifying that certain licenses are not
36 transferable or assignable; revising the grounds on which
37 a license may be denied; deleting certain provisions
38 relating to cancellation and reinstatement of licenses;
39 amending s. 494.0032, F.S.; requiring renewal of branch
40 office licenses with renewal of mortgage brokerage
41 business licenses; amending s. 494.0033, F.S.; revising
42 mortgage broker licensure requirements and procedures;
43 authorizing the commission to prescribe additional testing
44 fees; authorizing the commission to waive certain
45 examination requirements under specified circumstances;
46 providing duties and authority of the commission and
47 office; providing duties of the Department of Law
48 Enforcement; deleting provisions relating to cancellation
49 and reinstatement of licenses; amending s. 494.0036, F.S.;
50 revising mortgage brokerage business branch office
51 licensure requirements and procedures; deleting a
52 requirement for displaying licenses; amending s. 494.0039,
53 F.S.; deleting mortgage brokerage business change of
54 address reporting and license display requirements;
55 amending s. 494.004, F.S.; revising mortgage broker
56 licensee requirements; providing requirements for

57 acquiring a controlling interest in a licensee; providing
58 a definition; providing duties and authority of the
59 commission; authorizing the office to bring an
60 administrative action under certain circumstances;
61 amending s. 494.0041, F.S.; specifying additional grounds
62 for taking disciplinary action; amending s. 494.006, F.S.;
63 revising the list of entities exempt from mortgage lender
64 licensure requirements; amending s. 494.0061, F.S.;
65 requiring the licensure of mortgage lenders; revising
66 mortgage lender license requirements and procedures;
67 providing duties and authority of the commission and
68 office; providing duties of the Department of Law
69 Enforcement; providing for commission rules; revising
70 provisions governing grounds for imposing discipline;
71 deleting certain provisions relating to cancellation and
72 reinstatement of licenses; authorizing the commission to
73 prescribe additional testing fees; revising provisions
74 governing principal representatives; amending s. 494.0062,
75 F.S.; requiring licensure of correspondent mortgage
76 lenders; revising correspondent mortgage lender license
77 requirements and procedures; providing duties and
78 authority of the commission and office; providing duties
79 of the Department of Law Enforcement; providing
80 educational requirements for principal representatives;
81 revising grounds for disciplinary action; deleting certain
82 provisions relating to cancellation and reinstatement of
83 licenses; authorizing the commission to prescribe
84 additional testing fees; providing for commission rules;

85 amending s. 494.0064, F.S.; revising mortgage lender
86 branch office licensee professional continuing education
87 requirements; amending s. 494.0065, F.S.; revising saving
88 clause requirements and procedures; revising the duties
89 and authority of the office and commission; providing
90 duties of the Department of Law Enforcement; providing for
91 commission rules; providing requirements for education and
92 testing for certain principal representatives and for
93 transfer applications; authorizing the commission to
94 prescribe additional testing fees; revising provisions
95 governing the denial of transfers; providing personal
96 representative designation requirements; amending s.
97 494.0066, F.S.; revising branch office licensure
98 requirements; providing for commission rules; amending s.
99 494.0067, F.S.; deleting a license display requirement;
100 providing information reporting requirements; providing
101 requirements for acquiring a controlling interest in a
102 licensee; providing a definition; providing duties and
103 authority of the commission; authorizing the office to
104 bring an administrative action under certain
105 circumstances; revising professional continuing education
106 requirements; amending s. 494.0072, F.S.; providing
107 additional grounds for taking disciplinary action;
108 amending s. 494.00721, F.S.; conforming cross-references;
109 amending s. 501.137, F.S.; providing mortgage lender
110 liability for attorney's fees and costs for certain
111 violations; amending s. 516.01, F.S.; defining the term
112 "control person"; amending s. 516.03, F.S.; revising

113 requirements and procedures for issuing consumer finance
114 loan licenses; specifying certain fees as nonrefundable;
115 authorizing the commission to adopt rules; revising
116 certain fee requirements; providing for technological or
117 financial hardship exemptions under certain circumstances;
118 amending s. 516.031, F.S.; increasing a reimbursement
119 charge for certain investigation costs; amending s.
120 516.05, F.S.; revising investigation procedures; deleting
121 provisions relating to certain fees for licenses that have
122 been denied; providing licensee information reporting
123 requirements; providing requirements for acquiring a
124 controlling interest in a licensee; providing a
125 definition; providing duties and authority of the
126 commission and office; providing for commission rules;
127 authorizing the office to bring an administrative action
128 under certain circumstances; deleting provisions
129 authorizing the office to grant temporary licenses;
130 amending s. 516.07, F.S.; providing an additional ground
131 for taking disciplinary action; repealing s. 516.08, F.S.,
132 relating to requirements for posting a license; amending
133 s. 516.12, F.S.; authorizing the commission to adopt rules
134 specifying the minimum information to be shown in a
135 licensee's books, accounts, records, and documents and the
136 requirements for destroying a licensee's books, accounts,
137 records, and documents; amending s. 516.19, F.S.;
138 correcting cross-references; amending s. 517.021, F.S.;
139 redefining the term "branch office"; authorizing the
140 commission to adopt rules; amending s. 517.051, F.S.;

141 revising required accounting principles; amending s.
142 517.061, F.S.; revising a provision governing exempt
143 transactions; amending s. 517.081, F.S.; revising required
144 accounting principles; amending s. 517.12, F.S.; revising
145 requirements and procedures for registration of dealers,
146 associated persons, investment advisers, and branch
147 offices; revising duties and authority of the commission
148 and office; providing for commission rules; providing
149 duties of the Department of Law Enforcement; revising
150 requirements, procedures, and exemptions relating to
151 activities of Canadian dealers and associated persons;
152 providing for certain fees; providing that certain fees
153 are nonrefundable; providing for the collection of fees;
154 amending s. 517.131, F.S.; revising criteria under which
155 recovery can be made from the Securities Guaranty Fund;
156 authorizing the commission to adopt rules; amending s.
157 517.141, F.S.; revising requirements for claimant
158 reimbursements to the fund; authorizing the commission to
159 adopt rules; amending s. 517.161, F.S.; revising a ground
160 for a registration adverse action; providing an additional
161 ground; amending ss. 520.02, 520.31, and 520.61, F.S.;
162 defining the term "control person"; amending ss. 520.03,
163 520.32, 520.52, and 520.63, F.S.; revising requirements
164 and procedures for licensing motor vehicle retail
165 installment sellers, retail installment transaction retail
166 sellers, sales finance companies, and home improvement
167 finance sellers; revising duties and authority of the
168 commission and office; specifying certain fees as

169 nonrefundable; amending s. 520.994, F.S.; revising
170 commission authority to adopt rules to include electronic
171 submissions; providing for accommodating a technological
172 or financial hardship; amending s. 520.995, F.S.;
173 providing an additional ground for taking disciplinary
174 action; revising a provision applying disciplinary actions
175 to certain persons; amending s. 520.997, F.S.; revising
176 commission authority to adopt rules relating to a
177 licensee's books, accounts, records, and documents;
178 creating s. 520.999, F.S.; providing additional
179 requirements of licensees in sales and finance;
180 authorizing the office to bring an administrative action
181 under certain circumstances; authorizing the commission to
182 adopt rules; amending s. 537.009, F.S., relating to the
183 Florida Title Loan Act; revising provisions relating to a
184 licensee's books, accounts, records, and documents;
185 amending s. 559.9232, F.S.; correcting cross-references;
186 amending s. 560.105, F.S., relating to the Money
187 Transmitters' Code; authorizing the commission to adopt
188 rules for electronic submission of money transmitter
189 licensee forms, documents, or fees; providing for
190 exemptions due to technological or financial hardship;
191 amending s. 560.114, F.S.; providing an additional ground
192 for taking disciplinary action; amending s. 560.121, F.S.;
193 authorizing the commission to adopt rules relating to a
194 licensee's books, accounts, records, and documents;
195 amending s. 560.126, F.S.; revising information reporting
196 requirements; providing requirements for acquiring a

197 controlling interest; authorizing the office to bring an
198 administrative action under certain circumstances;
199 authorizing the commission to adopt rules; amending s.
200 560.127, F.S.; revising criteria for determining control
201 over a money transmitter; deleting provisions regulating
202 the acquisition or purchase of a money transmitter;
203 amending s. 560.205, F.S.; revising requirements and
204 procedures for registering money transmitters; revising
205 duties of the commission and office; providing duties of
206 the Department of Law Enforcement; amending s. 560.207,
207 F.S.; revising requirements and procedures for renewing a
208 registration; authorizing the commission to adopt rules;
209 providing that specified fees are nonrefundable; providing
210 conditions for reinstating a registration; providing an
211 additional fee; providing for expiration of registration;
212 amending s. 560.210, F.S.; revising required accounting
213 principles; amending s. 560.211, F.S.; revising certain
214 recordkeeping requirements; amending s. 560.305, F.S.,
215 relating to the Check Cashing and Foreign Currency
216 Exchange Act; revising requirements and procedures for
217 registration; amending s. 560.306, F.S.; revising
218 fingerprinting requirements and procedures; providing
219 duties of the office and Department of Law Enforcement;
220 amending s. 560.308, F.S.; revising requirements for
221 renewal of registration; providing for expiration of
222 registration; providing that specified fees are
223 nonrefundable; providing conditions for reinstatement of a
224 registration; amending s. 560.310, F.S.; revising certain

225 recordkeeping requirements; amending s. 560.403, F.S.;
226 revising requirements for registration renewal notices of
227 intent; providing that specified fees are nonrefundable;
228 providing conditions for reinstatement of a notice of
229 intent; amending s. 655.935, F.S.; authorizing the search
230 of a safe-deposit box co-leased by a decedent; providing
231 construction; amending s. 655.936, F.S.; providing for the
232 delivery of a safe-deposit box to a court-appointed
233 personal representative; amending s. 655.937, F.S.;
234 revising provisions for access to safe-deposit boxes;
235 providing a penalty; amending s. 733.6065, F.S.; revising
236 provisions relating to the initial opening of certain
237 safe-deposit boxes; providing an appropriation; providing
238 an effective date.
239
240 Be It Enacted by the Legislature of the State of Florida:
241
242 Section 1. Present subsections (9) through (30) of section
243 494.001, Florida Statutes, are redesignated as subsections (10)
244 through (31), respectively, and a new subsection (9) is added to
245 that section to read:
246 494.001 Definitions.--As used in ss. 494.001-494.0077, the
247 term:
248 (9) "Control person" means an individual, partnership,
249 corporation, trust, or other organization that possesses the
250 power, directly or indirectly, to direct the management or
251 policies of a company, whether through ownership of securities,
252 by contract, or otherwise. A person is presumed to control a

253 company if, with respect to a particular company, that person:
254 (a) Is a director, general partner, or officer exercising
255 executive responsibility or having similar status or functions;
256 (b) Directly or indirectly may vote 10 percent or more of
257 a class of voting securities or sell or direct the sale of 10
258 percent or more of a class of voting securities; or
259 (c) In the case of a partnership, may receive upon
260 dissolution or has contributed 10 percent or more of the
261 capital.
262 Section 2. Subsection (2) of section 494.0011, Florida
263 Statutes, is amended, and subsection (6) is added to that
264 section, to read:
265 494.0011 Powers and duties of the commission and office.--
266 (2) The commission may ~~has authority to~~ adopt rules
267 pursuant to ss. 120.536(1) and 120.54 to implement ss. 494.001-
268 494.0077. The commission may adopt rules requiring ~~to allow~~
269 electronic submission of any forms, documents, or fees required
270 by this act if such rules reasonably accommodate technological
271 or financial hardship. The commission may prescribe by rule
272 requirements and procedures for obtaining an exemption due to a
273 technological or financial hardship. The commission may also
274 adopt rules to accept certification of compliance with
275 requirements of this act in lieu of requiring submission of
276 documents.
277 (6) The grant or denial of any license under this chapter
278 must be in accordance with s. 120.60.
279 Section 3. Subsection (4) of section 494.0016, Florida
280 Statutes, is amended to read:

281 494.0016 Books, accounts, and records; maintenance;
282 examinations by the office.--
283 (4) The commission may prescribe by rule the minimum
284 information to be shown in the books, accounts, records, and
285 documents of licensees so that such records will enable the
286 office to determine the licensee's compliance with ss. 494.001-
287 494.0077. In addition, the commission may prescribe by rule
288 requirements for the destruction of books, accounts, records,
289 and documents retained by the licensee after completion of the
290 time period specified in subsection (3).
291 Section 4. Section 494.0029, Florida Statutes, is amended
292 to read:
293 494.0029 Mortgage business schools.--
294 (1)(a) Each person, school, or institution, except
295 accredited colleges, universities, community colleges, and
296 career centers in this state, which offers or conducts mortgage
297 business training for the purpose of meeting professional
298 continuing education requirements or as a condition precedent to
299 licensure as a mortgage broker, mortgage ~~or~~ lender, or ~~a~~
300 correspondent mortgage lender must ~~shall~~ obtain a permit from
301 the office to operate as a mortgage business school before
302 offering or conducting mortgage business training and must abide
303 by the regulations imposed upon such person, school, or
304 institution by this chapter and rules adopted pursuant to this
305 chapter. The commission may require by rule that each applicant
306 for a mortgage business school permit provide any information
307 reasonably necessary to determine the applicant's eligibility.
308 Each person, school, or institution that applies for a permit

309 under this section must do so on forms adopted by the commission
310 by rule ~~The commission shall, by rule, recertify the permits~~
311 ~~annually with initial and renewal permit fees that do not exceed~~
312 ~~$500 plus the cost of accreditation~~.
313 (b) An application is considered received for purposes of
314 s. 120.60 upon receipt of a completed application form as
315 prescribed by commission rule, a nonrefundable application fee
316 of $500, the cost of accreditation as defined by commission
317 rule, and any other fee prescribed by law.
318 (c) A permit issued under this section is not transferable
319 or assignable.
320 (d) Each permitted mortgage business school shall report,
321 on a form prescribed by the commission, any change in the
322 information contained in the initial application form or any
323 amendment to such form not later than 30 days after the change
324 is effective.
325 (e) A permit issued under this section expires on
326 September 30th of each year. The office shall recertify a permit
327 annually upon submission of information the commission requires
328 by rule, together with a nonrefundable permit fee of $500, and
329 the cost of accreditation as defined by commission rule, which
330 shall be for the annual period beginning October 1 of each year.
331 ~~(2) All such schools shall maintain curriculum and~~
332 ~~training materials necessary to determine the school's~~
333 ~~compliance with this chapter and rules adopted pursuant to this~~
334 ~~chapter. Any school that offers or conducts mortgage business~~
335 ~~training shall at all times maintain an operation of training,~~
336 ~~materials, and curriculum which is open to review by the office~~

337 ~~to determine compliance and competency as a mortgage business~~
338 ~~school.~~
339 (2) ~~(3)~~ (a) It is unlawful for any such person, school, or
340 institution to offer or conduct mortgage business courses,
341 regardless of the number of pupils, without first procuring a
342 permit or to guarantee that the pupils will pass any mortgage
343 business examination given on behalf of the office or to
344 represent that the issuance of a permit is any recommendation or
345 endorsement of the person, school, or institution to which it is
346 issued or of any course of instruction given thereunder. Any
347 person who violates this paragraph commits a misdemeanor of the
348 second degree, punishable as provided in s. 775.082 or s.
349 775.083.
350 (b) The location of classes and the frequency of class
351 meetings shall be in the discretion of the school offering the
352 courses, if such courses conform to this chapter and related
353 rules adopted by the commission.
354 (c) A mortgage business school may not use advertising of
355 any nature which is false, inaccurate, misleading, or
356 exaggerated. Publicity and advertising of a mortgage business
357 school, or of its representative, shall be based upon relevant
358 facts and supported by evidence establishing their truth.
359 (d) A representative of a mortgage business school subject
360 to the provisions of this chapter may not promise or guarantee
361 employment or placement of any pupil or prospective pupil, using
362 information, training, or skill purported to be provided or
363 otherwise enhanced by a course or school as inducement to enroll
364 in the school, unless such person offers the pupil or

365 prospective pupil a bona fide contract of employment.
366 (e) A school shall advertise only as a school and under
367 the permitted name of such school as recognized by the office.
368 (f) Reference may not be made in any publication or
369 communication medium as to a pass/fail ratio on mortgage
370 business examinations by any school permitted by the office.
371 (3) Each person, school, or institution that is required
372 to be permitted as a mortgage business school under this section
373 shall maintain and make available for the office's review,
374 inspection, and observation any training, curriculum, and
375 training materials necessary for the office to determine
376 compliance with this chapter and the rules adopted under this
377 chapter. All documents prescribed by commission rule must be
378 submitted with the initial application or recertification.
379 (4) Each person, school, or institution that is required
380 to be permitted as a mortgage business school under this section
381 must provide electronic notification to the office, in a manner
382 prescribed by commission rule, of any pupils who have
383 successfully completed the 24-hour prelicensure classroom
384 instruction for mortgage brokers and principal representatives
385 and any pupils who have completed the 14-hour professional
386 continuing education for mortgage brokers.
387 Section 5. Section 494.00295, Florida Statutes, is amended
388 to read:
389 494.00295 Professional continuing education.--
390 (1) Mortgage brokers, and the principal representatives
391 and loan originators of a mortgage lender, correspondent
392 mortgage lender, or mortgage lender pursuant to s. 494.0065,

393 must successfully complete at least 14 hours of professional
394 continuing education covering primary and subordinate mortgage
395 financing transactions and the provisions of this chapter during
396 the 2-year period immediately preceding the renewal deadline for
397 a mortgage broker, mortgage lender, correspondent mortgage
398 lender, or mortgage lender pursuant to s. 494.0065. At the time
399 of license renewal, a licensee must certify to the office that
400 the professional continuing education requirements of this
401 section have been met. Licensees shall maintain records
402 documenting compliance with this subsection for a period of 4
403 years. The requirements for professional continuing education
404 are waived for the license renewal of a mortgage broker for the
405 biennial license period immediately following the period in
406 which the person became licensed as a mortgage broker. The
407 requirements for professional continuing education for a
408 principal representative are waived for the license renewal of a
409 mortgage lender, correspondent mortgage lender, or mortgage
410 lender pursuant to s. 494.0065 for the biennial license period
411 immediately following the period in which the principal
412 representative completed the 24 hours of classroom education and
413 passed a written test in order to qualify to be a principal
414 representative ~~Each mortgage broker, mortgage lender, and~~
415 ~~correspondent mortgage lender must certify to the office at the~~
416 ~~time of renewal that during the 2 years prior to an application~~
417 ~~for license renewal, all mortgage brokers and the principal~~
418 ~~representative, loan originators, and associates of a mortgage~~
419 ~~lender or correspondent mortgage lender have successfully~~
420 ~~completed at least 14 hours of professional education programs~~

421 ~~covering primary and subordinate mortgage financing transactions~~
422 ~~and the provisions of this chapter. Licensees shall maintain~~
423 ~~records documenting compliance with this subsection for a period~~
424 ~~of 4 years~~.
425 (2) Professional continuing education programs must
426 contribute directly to the professional competency of the
427 participants, may only be offered by permitted mortgage business
428 schools or entities specifically exempted from permitting as
429 mortgage business schools, and may include electronically
430 transmitted or distance education courses.
431 (3) The commission shall adopt rules necessary to
432 administer this section, including rules governing qualifying
433 hours for professional continuing education programs and
434 standards for electronically transmitted or distance education
435 courses, including course completion requirements.
436 Section 6. Paragraphs (b) and (c) of subsection (1) and
437 paragraph (e) of subsection (2) of section 494.003, Florida
438 Statutes, are amended to read:
439 494.003 Exemptions.--
440 (1) None of the following persons is subject to the
441 requirements of ss. 494.003-494.0043:
442 (b) A state or federal chartered bank, ~~bank holding~~
443 ~~company,~~ trust company, savings and loan association, savings
444 bank or~~,~~ credit union, bank holding company regulated under the
445 laws of any state or the United States, or consumer finance
446 company licensed pursuant to chapter 516.
447 (c) A wholly owned bank holding company subsidiary or a
448 wholly owned savings and loan association holding company

449 subsidiary formed and regulated under the laws of any state or
450 the United States that is approved or certified by the
451 Department of Housing and Urban Development, the Veterans
452 Administration, the Government National Mortgage Association,
453 the Federal National Mortgage Association, or the Federal Home
454 Loan Mortgage Corporation.
455 (2) None of the following persons is required to be
456 licensed under ss. 494.003-494.0043:
457 (e) A wholly owned subsidiary of a state or federal
458 chartered bank or savings and loan association the sole activity
459 of which is to distribute the lending programs of such state or
460 federal chartered bank or savings and loan association to
461 persons who arrange loans for, or make loans to, borrowers.
462 Section 7. Section 494.0031, Florida Statutes, is amended
463 to read:
464 494.0031 Licensure as a mortgage brokerage business.--
465 (1) Each person who acts as a mortgage brokerage business
466 must be licensed under this section unless otherwise exempt from
467 licensure.
468 (2) ~~(1)~~ Each initial application for a mortgage brokerage
469 business license must be in the form prescribed by rule of the
470 commission. The commission may require each applicant to provide
471 any information reasonably necessary to determine the
472 applicant's eligibility for licensure. The office shall issue a
473 mortgage brokerage business license to each person who:
474 (a) Has submitted a completed application form and a
475 nonrefundable application fee of $425. An application is
476 considered received for purposes of s. 120.60 upon receipt of a

477 completed application form as prescribed by commission rule, a
478 nonrefundable application fee of $425, and any other fee
479 prescribed by law.~~; and~~
480 (b) Has a qualified principal broker pursuant to s.
481 494.0035.
482 (c)~~(2)~~ Has provided a complete set of fingerprints as the
483 commission may require by rule for ~~that~~ each officer, director,
484 control person, member, partner, or joint venturer of the
485 applicant and each ultimate equitable owner of a 10-percent or
486 greater interest in the mortgage brokerage business. A
487 fingerprint card submitted to the office must be ~~submit a~~
488 ~~complete set of fingerprints~~ taken by an authorized law
489 enforcement agency ~~officer~~. The office shall submit the
490 fingerprints to the Department of Law Enforcement for state
491 processing and the Department of Law Enforcement shall forward
492 the fingerprints to the Federal Bureau of Investigation for
493 federal processing. The cost of the fingerprint processing may
494 be borne by the office, the employer, or the person subject to
495 the background check. The Department of Law Enforcement shall
496 submit an invoice to the office for the fingerprints received
497 each month. The office shall screen the background results to
498 determine if the applicant meets licensure requirements.
499 (d) Has provided information that the commission requires
500 by rule concerning any designated principal mortgage broker; any
501 officer, director, control person, member, partner, or joint
502 venturer of the applicant; or any individual who is the ultimate
503 equitable owner of a 10-percent or greater interest in the
504 mortgage brokerage business. The commission may require

505 information about any such applicant or person, including, but
506 not limited to, his or her full name or other names by which he
507 or she may have been known, age, social security number,
508 qualifications, educational and business history, and
509 disciplinary and criminal history.
510 (3) Notwithstanding ~~the provisions of~~ subsection (2) ~~(1)~~,
511 it is a ground for denial of licensure if the applicant;
512 designated principal mortgage broker; any officer, director,
513 control person, member, partner, or joint venturer of the
514 applicant; ~~any natural person owning a 10-percent or greater~~
515 ~~interest in the mortgage brokerage business;~~ or any individual
516 ~~natural~~ person who is the ultimate equitable owner of a 10-
517 percent or greater interest in the mortgage brokerage business
518 has committed any violation specified in ss. 494.001-494.0077 or
519 has pending against him or her in any jurisdiction any criminal
520 prosecution or administrative enforcement action that~~, in any~~
521 ~~jurisdiction, which~~ involves fraud, dishonest dealing, or any
522 other act of moral turpitude.
523 (4) A mortgage brokerage business or branch office license
524 may be canceled if it was issued through mistake or inadvertence
525 of the office. A notice of cancellation must be issued by the
526 office within 90 days after the issuance of the license. A
527 notice of cancellation is ~~shall be~~ effective upon receipt. The
528 notice of cancellation must ~~shall~~ provide the applicant with
529 notification of the right to request a hearing within 21 days
530 after the applicant's receipt of the notice of cancellation. A
531 license must ~~shall~~ be reinstated if the applicant can
532 demonstrate that the requirements for obtaining the license

533 under ~~pursuant to~~ this chapter have been satisfied.
534 ~~(5) If an initial mortgage brokerage business or branch~~
535 ~~office license has been issued but the check upon which the~~
536 ~~license is based is returned due to insufficient funds, the~~
537 ~~license shall be deemed canceled. A license deemed canceled~~
538 ~~pursuant to this subsection shall be reinstated if the office~~
539 ~~receives a certified check for the appropriate amount within 30~~
540 ~~days after the date the check was returned due to insufficient~~
541 ~~funds.~~
542 Section 8. Subsection (1) of section 494.0032, Florida
543 Statutes, is amended to read:
544 494.0032 Renewal of mortgage brokerage business license or
545 branch office license.--
546 (1) The office shall renew a mortgage brokerage business
547 license upon receipt of a completed renewal form and payment of
548 a nonrefundable renewal fee of $375. Each licensee shall pay at
549 the time of renewal a nonrefundable renewal fee of $225 for the
550 renewal of each branch office license. The license for a branch
551 office must be renewed in conjunction with the renewal of the
552 mortgage brokerage business license.
553 Section 9. Subsections (1), (2), and (7) of section
554 494.0033, Florida Statutes, are amended to read:
555 494.0033 Mortgage broker's license.--
556 (1) Each natural person who acts as a mortgage broker for
557 a mortgage brokerage business or acts as an associate for a
558 mortgage lender or correspondent mortgage lender must be
559 licensed under ~~pursuant to~~ this section. To act as a mortgage
560 broker, an individual must be an associate of a mortgage

561 brokerage business, a mortgage lender, or a correspondent
562 mortgage lender. A mortgage broker may not be ~~is prohibited from~~
563 ~~being~~ an associate of more than one mortgage brokerage business,
564 mortgage lender, or correspondent mortgage lender.
565 (2) Each initial application for a mortgage broker's
566 license must be in the form prescribed by rule of the
567 commission. The commission may require each applicant to provide
568 any information reasonably necessary to make a determination of
569 the applicant's eligibility for licensure. The office shall
570 issue an initial license to any natural person who:
571 (a) Is at least 18 years of age.~~;~~
572 (b) Has passed a written test adopted and administered by
573 the office, or has passed an electronic test adopted and
574 administered by the office or a third party approved by the
575 office, which is designed to determine competency in primary and
576 subordinate mortgage financing transactions as well as to test
577 knowledge of ss. 494.001-494.0077 and the rules adopted pursuant
578 thereto. The commission may prescribe by rule an additional fee
579 that may not exceed $100 for the electronic version of the
580 mortgage broker test. The commission may waive by rule the
581 examination requirement for any person who has passed a test
582 approved by the Conference of State Bank Supervisors, the
583 American Association of Residential Mortgage Regulators, or the
584 United States Department of Housing and Urban Development if the
585 test covers primary and subordinate mortgage financing
586 transactions.~~;~~
587 (c) Has submitted a completed application and a
588 nonrefundable application fee of $200. An application is

589 considered received for purposes of s. 120.60 upon receipt of a
590 completed application form as prescribed by commission rule, a
591 nonrefundable application fee of $200, and any other fee
592 prescribed by law. ~~The commission may set by rule an additional~~
593 ~~fee for a retake of the examination; and~~
594 (d) Has filed a complete set of fingerprints~~, taken by an~~
595 ~~authorized law enforcement officer,~~ for submission by the office
596 to the Department of Law Enforcement or the Federal Bureau of
597 Investigation for processing. A fingerprint card submitted to
598 the office must be taken by an authorized law enforcement
599 agency. The office shall submit the fingerprints to the
600 Department of Law Enforcement for state processing and the
601 Department of Law Enforcement shall forward the fingerprints to
602 the Federal Bureau of Investigation for federal processing. The
603 cost of the fingerprint processing may be borne by the office,
604 the employer, or the person subject to the background check. The
605 Department of Law Enforcement shall submit an invoice to the
606 office for the fingerprints received each month. The office
607 shall screen the background results to determine if the
608 applicant meets licensure requirements.
609
610 The commission may require by rule information concerning any
611 such applicant or person, including, but not limited to, his or
612 her full name and any other names by which he or she may have
613 been known, age, social security number, qualifications and
614 educational and business history, and disciplinary and criminal
615 history.
616 ~~(7) If an initial mortgage broker license has been issued~~

617 ~~but the check upon which the license is based is returned due to~~
618 ~~insufficient funds, the license shall be deemed canceled. A~~
619 ~~license deemed canceled pursuant to this subsection shall be~~
620 ~~reinstated if the office receives a certified check for the~~
621 ~~appropriate amount within 30 days after the date the check was~~
622 ~~returned due to insufficient funds.~~
623 Section 10. Subsections (2) and (3) of section 494.0036,
624 Florida Statutes, are amended to read:
625 494.0036 Mortgage brokerage business branch offices.--
626 (2) The office shall issue a mortgage brokerage business
627 branch office license to a mortgage brokerage business licensee
628 after the office determines that the licensee has submitted ~~upon~~
629 ~~receipt of~~ a completed application for a branch office in a form
630 as prescribed by commission rule and payment of an initial
631 nonrefundable branch office license fee of $225. ~~Branch office~~
632 ~~licenses must be renewed in conjunction with the renewal of the~~
633 ~~mortgage brokerage business license.~~ The branch office license
634 shall be issued in the name of the mortgage brokerage business
635 that maintains the branch office. An application is considered
636 received for purposes of s. 120.60 upon receipt of a completed
637 application form as prescribed by commission rule, a
638 nonrefundable application fee of $225, and any other fee
639 prescribed by law.
640 ~~(3) Each branch office must prominently display the~~
641 ~~license issued for such branch office. Each person licensed as a~~
642 ~~mortgage broker must prominently display his or her license in~~
643 ~~the office where such person acts as a mortgage broker.~~
644 Section 11. Section 494.0039, Florida Statutes, is amended

645 to read:
646 494.0039 Principal place of business requirements.--
647 ~~(1)~~ Each mortgage brokerage business licensee shall
648 maintain and transact business from a principal place of
649 business.
650 ~~(2) A licensee under ss. 494.003-494.0043 shall report any~~
651 ~~change of address of the principal place of business or any~~
652 ~~branch office within 15 days after the change.~~
653 ~~(3) Each mortgage brokerage business must prominently~~
654 ~~display its license at the principal place of business. Each~~
655 ~~licensed mortgage broker must prominently display his or her~~
656 ~~license in the office where such person acts as a mortgage~~
657 ~~broker.~~
658 Section 12. Section 494.004, Florida Statutes, is amended
659 to read:
660 494.004 Requirements of licensees.--
661 (1) Each licensee under ss. 494.003-494.0043 shall report,
662 in writing, any conviction of, or plea of nolo contendere to,
663 regardless of adjudication, any crime or administrative
664 violation that involves fraud, dishonest dealing, or any other
665 act of moral turpitude, in any jurisdiction, by the licensee or
666 any natural person named in s. 494.0031(2)(d)~~(3)~~, not later than
667 30 days after the date of conviction, entry of a plea of nolo
668 contendere, or final administrative action.
669 (2) Each licensee under ss. 494.003-494.0043 shall report,
670 in a form prescribed by rule of the commission, any conviction
671 of, or plea of nolo contendere to, regardless of whether
672 adjudication is withheld, any felony committed by the licensee

673 or any natural person named in s. 494.0031(2)(d) ~~(3)~~, not later
674 than 30 days after the date of conviction or the date the plea
675 of nolo contendere is entered.
676 (3) Each licensee under ss. 494.003-494.0043 shall report
677 any action in bankruptcy, voluntary or involuntary, to the
678 office not later than 7 business days after the action is
679 instituted.
680 (4) Each licensee under ss. 494.003-494.0043 shall report
681 on a form prescribed by rule of the commission any change to the
682 information contained in any initial application form or any
683 amendment to the application ~~any change in the form of business~~
684 ~~organization or any change of a person named, pursuant to s.~~
685 ~~494.0031(3), to the office in writing~~ not later than 30 days
686 after the change is effective.
687 (5) A license issued under ss. 494.003-494.0043 is not
688 transferable or assignable.
689 (6) Each licensee under ss. 494.003-494.0043 shall report
690 any change in the principal broker, partners, officers, members,
691 joint venturers, directors, control persons of any licensee, or
692 any individual who is the ultimate equitable owner of a 10-
693 percent or greater interest in the licensee, or any change in
694 the form of business organization, by written amendment in the
695 form and at the time the commission specifies by rule.
696 (a) In any case in which a person or a group of persons,
697 directly or indirectly or acting by or through one or more
698 persons, proposes to purchase or acquire a controlling interest
699 in a licensee, such person or group shall submit an initial
700 application for licensure as a mortgage brokerage business

701 before such purchase or acquisition and at the time and in the
702 form the commission prescribes by rule.
703 (b) As used in this subsection, the term "controlling
704 interest" means possession of the power to direct or cause the
705 direction of the management or policies of a company whether
706 through ownership of securities, by contract, or otherwise. Any
707 person who directly or indirectly has the right to vote 25
708 percent or more of the voting securities of a company or is
709 entitled to 25 percent or more of the company's profits is
710 presumed to possess a controlling interest.
711 (c) Any addition of a partner, officer, member, joint
712 venturer, director, control person, or ultimate equitable owner
713 of the applicant who does not have a controlling interest and
714 who has not previously complied with the provisions of s.
715 494.0031(2)(c) and (d) is subject to such provisions unless
716 required to file an initial application in accordance with
717 paragraph (a). If the office finds that the licensee does not
718 continue to meet licensure requirements, the office may bring an
719 administrative action in accordance with s. 494.0041 to enforce
720 the provisions of this chapter.
721 (d) The commission shall adopt rules pursuant to ss.
722 120.536(1) and 120.54 providing for the waiver of the
723 application required by this subsection if the person or group
724 of persons proposing to purchase or acquire a controlling
725 interest in a licensee has previously complied with the
726 provisions of s. 494.0031(2)(c) and (d) with respect to the same
727 legal entity or is currently licensed by the office under this
728 chapter.

729 (7) ~~(6)~~ On or before April 30, 2000, each mortgage
730 brokerage business shall file an initial report stating the
731 name, social security number, date of birth, mortgage broker
732 license number, date of hire and, if applicable, date of
733 termination for each person who was an associate of the mortgage
734 brokerage business during the immediate preceding quarter.
735 Thereafter, a mortgage brokerage business shall file a quarterly
736 report only if a person became an associate or ceased to be an
737 associate of the mortgage brokerage business during the
738 immediate preceding quarter. Such report shall be filed within
739 30 days after the last day of each calendar quarter and shall
740 contain the name, social security number, date of birth,
741 mortgage broker license number, date of hire and, if applicable,
742 the date of termination of each person who became or ceased to
743 be an associate of the mortgage brokerage business during the
744 immediate preceding quarter. The commission shall prescribe, by
745 rule, the procedures for filing reports required by this
746 subsection.
747 Section 13. Paragraphs (s), (t), and (u) are added to
748 subsection (2) of section 494.0041, Florida Statutes, and
749 subsection (3) of that section is amended, to read:
750 494.0041 Administrative penalties and fines; license
751 violations.--
752 (2) Each of the following acts constitutes a ground for
753 which the disciplinary actions specified in subsection (1) may
754 be taken:
755 (s) Payment to the office for a license or permit with a
756 check or electronic transmission of funds that is dishonored by

757 the applicant's or licensee's financial institution.
758 (t) Having a final judgment entered against the applicant
759 or licensee in a civil action upon grounds of fraud,
760 embezzlement, misrepresentation, or deceit.
761 (u)1. Having been the subject of any decision, finding,
762 injunction, suspension, prohibition, revocation, denial,
763 judgment, or administrative order by any court of competent
764 jurisdiction, administrative law judge, state or federal agency,
765 national securities exchange, national commodities exchange,
766 national option exchange, national securities association,
767 national commodities association, or national option association
768 involving a violation of any federal or state securities or
769 commodities law or rule or regulation adopted under such law or
770 involving a violation of any rule or regulation of any national
771 securities, commodities, or options exchange or association.
772 2. Having been the subject of any injunction or adverse
773 administrative order by a state or federal agency regulating
774 banking, insurance, finance or small loan companies, real
775 estate, mortgage brokers or lenders, money transmitters, or
776 other related or similar industries.
777 (3) A mortgage brokerage business is subject to the
778 disciplinary actions specified in subsection (1) for a violation
779 of subsection (2) by any officer, member, director, control
780 person, joint venturer, partner, ultimate equitable owner of a
781 10-percent or greater interest in the mortgage brokerage
782 business, or associate mortgage broker of the licensee.
783 Section 14. Paragraphs (a) and (c) of subsection (1) and
784 paragraph (a) of subsection (2) of section 494.006, Florida

785 Statutes, are amended to read:
786 494.006 Exemptions.--
787 (1) None of the following persons are subject to the
788 requirements of ss. 494.006-494.0077 in order to act as a
789 mortgage lender or correspondent mortgage lender:
790 (a) A state or federal chartered bank, ~~bank holding~~
791 ~~company,~~ trust company, savings and loan association, savings
792 bank or~~,~~ credit union, bank holding company regulated under the
793 laws of any state or the United States, or insurance company if
794 the insurance company is duly licensed in this state.
795 (c) A wholly owned bank holding company subsidiary or a
796 wholly owned savings and loan association holding company
797 subsidiary that is formed and regulated under the laws of any
798 state or the United States and that is approved or certified by
799 the Department of Housing and Urban Development, the Veterans
800 Administration, the Government National Mortgage Association,
801 the Federal National Mortgage Association, or the Federal Home
802 Loan Mortgage Corporation.
803 (2)(a) A natural person employed by a mortgage lender or
804 correspondent mortgage lender licensed under ss. 494.001-
805 494.0077 is exempt from the licensure requirements of ss.
806 494.001-494.0077 when acting within the scope of employment with
807 the licensee.
808 Section 15. Section 494.0061, Florida Statutes, is amended
809 to read:
810 494.0061 Mortgage lender's license requirements.--
811 (1) Each person who acts as a mortgage lender must be
812 licensed under this section unless otherwise exempt from

813 licensure.
814 (2) ~~(1)~~ Each initial application for a mortgage lender
815 license must be in the form prescribed by rule of the
816 commission. The commission or office may require each applicant
817 for a mortgage lender license to provide any information
818 reasonably necessary to make a determination of the applicant's
819 eligibility for licensure. The office shall issue an initial
820 mortgage lender license to any person that submits:
821 (a) A completed application form.~~;~~
822 (b) A nonrefundable application fee of $575. An
823 application is considered received for purposes of s. 120.60
824 upon receipt of a completed application form as prescribed by
825 commission rule, a nonrefundable application fee of $575, and
826 any other fee prescribed by law.~~;~~
827 (c) Audited financial statements, which documents disclose
828 that the applicant has a bona fide and verifiable net worth,
829 pursuant to United States generally accepted accounting
830 principles, of at least $250,000, which must be continuously
831 maintained as a condition of licensure.~~;~~
832 (d) A surety bond in the amount of $10,000, payable to the
833 state and conditioned upon compliance with ss. 494.001-494.0077,
834 which inures to the office and which must be continuously
835 maintained thereafter in full force.~~;~~
836 (e) Documentation that the applicant is duly incorporated,
837 registered, or otherwise formed as a general partnership,
838 limited partnership, limited liability company, or other lawful
839 entity under the laws of this state or another state of the
840 United States.~~; and~~

841 (f) ~~For applications submitted after October 1, 2001,~~
842 Proof that the applicant's principal representative has
843 completed 24 hours of classroom instruction in primary and
844 subordinate financing transactions and in the provisions of this
845 chapter and rules adopted under this chapter. This requirement
846 is satisfied if the principal representative has continuously
847 served in the capacity of a principal representative for a
848 licensed entity under this chapter for at least 1 year and has
849 not had a lapse in designation as a principal representative of
850 more than 2 years before the date of the submission of the
851 application or amendment in the case of a change in the
852 principal representative. This requirement is also satisfied if
853 the principal representative currently holds an active license
854 as a mortgage broker in this state.
855 (g) A complete set of fingerprints as the commission
856 requires by rule for the designated principal representative and
857 each officer, director, control person, member, partner, or
858 joint venturer of the applicant and ultimate equitable owner of
859 a 10-percent or greater interest in the applicant. A fingerprint
860 card submitted to the office must be taken by an authorized law
861 enforcement agency. The office shall submit the fingerprints to
862 the Department of Law Enforcement for state processing and the
863 Department of Law Enforcement shall forward the fingerprints to
864 the Federal Bureau of Investigation for federal processing. The
865 cost for the fingerprint processing may be borne by the office,
866 the employer, or the person subject to the background check. The
867 Department of Law Enforcement shall submit an invoice to the
868 office for the fingerprints received each month. The office

869 shall screen the background results to determine if the
870 applicant meets licensure requirements.
871 (h) Information the commission requires by rule concerning
872 any designated principal representative; any officer, director,
873 control person, member, partner, or joint venturer of the
874 applicant or any person having the same or substantially similar
875 status or performing substantially similar functions; or any
876 natural person who is the ultimate equitable owner of a 10-
877 percent or greater interest in the mortgage lender. The
878 commission may require information concerning any such applicant
879 or person, including, but not limited to, his or her full name
880 and any other names by which he or she may have been known,
881 social security number, age, qualifications and educational and
882 business history, and disciplinary and criminal history.
883 (3) ~~(2)~~ Notwithstanding ~~the provisions of~~ subsection (2)
884 ~~(1)~~, it is a ground for denial of licensure if the applicant;
885 designated principal representative; ~~,~~ any principal officer, ~~or~~
886 director, control person, member, partner, or joint venturer of
887 the applicant; ~~, or~~ any natural person owning a 10-percent or
888 greater interest in the applicant; ~~,~~ or any natural person who is
889 the ultimate equitable owner of a 10-percent or greater interest
890 in the applicant has committed any violation specified in s.
891 494.0072, or has pending against her or him any criminal
892 prosecution or administrative enforcement action, in any
893 jurisdiction, which involves fraud, dishonest dealing, or any
894 act of moral turpitude.
895 ~~(3) Each initial application for a mortgage lender's~~
896 ~~license must be in a form prescribed by the commission. The~~

897 ~~commission or office may require each applicant to provide any~~
898 ~~information reasonably necessary to make a determination of the~~
899 ~~applicant's eligibility for licensure. The commission or office~~
900 ~~may require that each officer, director, and ultimate equitable~~
901 ~~owner of a 10 percent or greater interest in the applicant~~
902 ~~submit a complete set of fingerprints taken by an authorized law~~
903 ~~enforcement officer.~~
904 (4) A person required to be licensed under ss. 494.006-
905 494.0077, or an agent or employee thereof, is deemed to have
906 consented to the venue of courts of competent jurisdiction in
907 this state regarding any matter within the authority of ss.
908 494.001-494.0077 regardless of where an act or violation was
909 committed.
910 (5) A license issued in accordance with ss. 494.006-
911 494.0077 is not transferable or assignable.
912 (6) A mortgage lender or branch office license may be
913 canceled if it was issued through mistake or inadvertence of the
914 office. A notice of cancellation must be issued by the office
915 within 90 days after the issuance of the license. A notice of
916 cancellation shall be effective upon receipt. The notice of
917 cancellation shall provide the applicant with notification of
918 the right to request a hearing within 21 days after the
919 applicant's receipt of the notice of cancellation. A license
920 shall be reinstated if the applicant can demonstrate that the
921 requirements for obtaining the license <u>under</u> ~~pursuant to~~ this
922 chapter have been satisfied.
923 ~~(7) If an initial mortgage lender or branch office license~~
924 ~~has been issued but the check upon which the license is based is~~

925 ~~returned due to insufficient funds, the license shall be deemed~~
926 ~~canceled. A license deemed canceled pursuant to this subsection~~
927 ~~shall be reinstated if the office receives a certified check for~~
928 ~~the appropriate amount within 30 days after the date the check~~
929 ~~was returned due to insufficient funds.~~
930 (7) ~~(8)~~ Each lender, regardless of the number of branches
931 it operates, shall designate a principal representative who
932 exercises control of the licensee's business and shall maintain
933 a form prescribed by the commission designating the principal
934 representative. If the form is not accurately maintained, the
935 business is considered to be operated by each officer, director,
936 or equitable owner of a 10-percent or greater interest in the
937 business.
938 (8) ~~(9)~~ ~~After October 1, 2001,~~ An applicant's principal
939 representative must pass a written test prescribed by the
940 commission and administered by the office, or must pass an
941 electronic test prescribed by the commission and administered by
942 the office or a third party approved by the office, which covers
943 primary and subordinate mortgage financing transactions and the
944 provisions of this chapter and rules adopted under this chapter.
945 The commission may set a fee by rule, which may not exceed $100,
946 for the electronic version of the mortgage broker test. The
947 commission may waive by rule the examination requirement for any
948 person who has passed a test approved by the Conference of State
949 Bank Supervisors, the American Association of Residential
950 Mortgage Regulators, or the United States Department of Housing
951 and Urban Development if the test covers primary and subordinate
952 mortgage financing transactions. This requirement is satisfied

953 if the principal representative has continuously served in the
954 capacity of a principal representative for a licensed entity
955 under this chapter for at least 1 year and has not had a lapse
956 in designation as a principal representative of more than 2
957 years before the date of the submission of the application or
958 amendment in the case of a change in the principal
959 representative. This requirement is also satisfied if the
960 principal representative holds an active license as a mortgage
961 broker in this state.
962 (9) ~~(10)~~ A lender shall notify the office of any change in
963 the designation of its principal representative within 30 days
964 after the change is effective. A new principal representative
965 shall satisfy ~~the name and address of any new principal~~
966 ~~representative and shall document that the person has completed~~
967 the educational and testing requirements of this section within
968 90 days after being designated as ~~upon~~ the ~~designation of a~~ new
969 principal representative. This requirement is satisfied if the
970 principal representative has continuously served in the capacity
971 of a principal representative for a licensed entity under this
972 chapter for at least 1 year and has not had a lapse in
973 designation as a principal representative of more than 2 years
974 before the date of the submission of the application or
975 amendment in the case of a change in the principal
976 representative. This requirement is also satisfied if the
977 principal representative holds an active license as a mortgage
978 broker in this state.
979 Section 16. Section 494.0062, Florida Statutes, is amended
980 to read:

981 494.0062 Correspondent mortgage lender's license
982 requirements.--
983 (1) Each person who acts as a correspondent mortgage
984 lender must be licensed under this section unless otherwise
985 exempt from licensure.
986 (2) ~~(1)~~ Each initial application for a correspondent
987 mortgage lender's license must be in the form prescribed by rule
988 of the commission. The office may require each applicant to
989 provide any information reasonably necessary to determine the
990 applicant's eligibility for licensure. The office shall issue an
991 initial correspondent mortgage lender license to any person who
992 submits:
993 (a) A completed application form.~~;~~
994 (b) A nonrefundable application fee of $500. An
995 application is considered received for purposes of s. 120.60
996 upon receipt of a completed application form as prescribed by
997 commission rule, a nonrefundable application fee of $500, and
998 any other fee prescribed by law.~~;~~
999 (c) Audited financial statements that~~, which~~ document that
1000 the applicant ~~application~~ has a bona fide and verifiable net
1001 worth pursuant to United States generally accepted accounting
1002 principles of $25,000 or more, which must be continuously
1003 maintained as a condition of licensure.~~;~~
1004 (d) A surety bond in the amount of $10,000, payable to the
1005 State of Florida and conditioned upon compliance with ss.
1006 494.001-494.0077, which inures to the office and which must be
1007 continuously maintained, thereafter, in full force.~~;~~
1008 (e) Documentation that the applicant is duly incorporated,

1009 registered, or otherwise formed as a general partnership,
1010 limited partnership, limited liability company, or other lawful
1011 entity under the laws of this state or another state of the
1012 United States.~~; and~~
1013 (f) ~~For applications filed after October 1, 2001,~~ Proof
1014 that the applicant's principal representative has completed 24
1015 hours of classroom instruction in primary and subordinate
1016 financing transactions and in the provisions of this chapter and
1017 rules enacted under this chapter. This requirement is satisfied
1018 if the principal representative has continuously served in the
1019 capacity of a principal representative for a licensed entity
1020 under this chapter for at least 1 year and has not had a lapse
1021 in designation as a principal representative of more than 2
1022 years before the date of the submission of the application or
1023 amendment in the case of a change in the principal
1024 representative. This requirement is also satisfied if the
1025 principal representative holds an active license as a mortgage
1026 broker in this state.
1027 (g) A complete set of fingerprints as the commission
1028 requires by rule for the designated principal representative and
1029 each officer, director, control person, member, partner, or
1030 joint venturer of the applicant and ultimate equitable owner of
1031 a 10-percent or greater interest in the applicant. A fingerprint
1032 card submitted to the office must be taken by an authorized law
1033 enforcement agency. The office shall submit the fingerprints to
1034 the Department of Law Enforcement for state processing and the
1035 Department of Law Enforcement shall forward the fingerprints to
1036 the Federal Bureau of Investigation for federal processing. The

1037 cost of the fingerprint processing may be borne by the office,
1038 the employer, or the person subject to the background check. The
1039 Department of Law Enforcement shall submit an invoice to the
1040 office for the fingerprints received each month. The office
1041 shall screen the background results to determine if the
1042 applicant meets licensure requirements.
1043 (h) Information the commission requires by rule concerning
1044 any designated principal representative; any officer, director,
1045 control person, member, partner, or joint venturer of the
1046 applicant or any person having the same or substantially similar
1047 status or performing substantially similar functions; or any
1048 natural person who is the ultimate equitable owner of a 10-
1049 percent or greater interest in the correspondent mortgage
1050 lender. The office may require information concerning any such
1051 applicant or person, including, but not limited to, his or her
1052 full name and any other names by which he or she may have been
1053 known, age, social security number, qualifications and
1054 educational and business history, and disciplinary and criminal
1055 history.
1056 (3) ~~(2)~~ Notwithstanding ~~the provisions of~~ subsection (2)
1057 ~~(1)~~, it is a ground for denial of licensure if the applicant;
1058 any designated principal representative; ~~,~~ any principal officer,
1059 ~~or~~ director, control person, member, partner, or joint venturer
1060 of the applicant; ~~,~~ or any natural person who is the ultimate
1061 equitable owner of a 10-percent or greater interest in the
1062 applicant has committed any violation specified in s. 494.0072,
1063 or has pending against her or him any criminal prosecution or
1064 administrative enforcement action, in any jurisdiction, which

1065 involves fraud, dishonest dealing, or any act of moral
1066 turpitude.
1067 ~~(3) Each initial application for a correspondent mortgage~~
1068 ~~lender's license must be in a form prescribed by the commission.~~
1069 ~~The commission or office may require each applicant to provide~~
1070 ~~any information reasonably necessary to make a determination of~~
1071 ~~the applicant's eligibility for licensure. The commission or~~
1072 ~~office may require that each officer, director, and ultimate~~
1073 ~~equitable owner of a 10 percent or greater interest submit a~~
1074 ~~complete set of fingerprints taken by an authorized law~~
1075 ~~enforcement officer.~~
1076 (4) Each license is valid for the remainder of the
1077 biennium in which the license is issued.
1078 (5) A person licensed as a correspondent mortgage lender
1079 may make mortgage loans, but may not service a mortgage loan for
1080 more than 4 months after the date the mortgage loan was made or
1081 acquired by the correspondent mortgage lender.
1082 (6) A licensee under ss. 494.006-494.0077, or an agent or
1083 employee thereof, is deemed to have consented to the venue of
1084 courts of competent jurisdiction in this state regarding any
1085 matter within the authority of ss. 494.001-494.0077 regardless
1086 of where an act or violation was committed.
1087 (7) A correspondent mortgage lender is subject to the same
1088 requirements and restrictions as a licensed mortgage lender
1089 unless otherwise provided in this section.
1090 (8) A license issued under this section is not
1091 transferable or assignable.
1092 (9) A correspondent mortgage lender or branch office

1093 license may be canceled if it was issued through mistake or
1094 inadvertence of the office. A notice of cancellation must be
1095 issued by the office within 90 days after the issuance of the
1096 license. A notice of cancellation shall be effective upon
1097 receipt. The notice of cancellation shall provide the applicant
1098 with notification of the right to request a hearing within 21
1099 days after the applicant's receipt of the notice of
1100 cancellation. A license shall be reinstated if the applicant can
1101 demonstrate that the requirements for obtaining the license
1102 pursuant to this chapter have been satisfied.
1103 ~~(10) If an initial correspondent mortgage lender or branch~~
1104 ~~office license has been issued but the check upon which the~~
1105 ~~license is based is returned due to insufficient funds, the~~
1106 ~~license shall be deemed canceled. A license deemed canceled~~
1107 ~~pursuant to this subsection shall be reinstated if the office~~
1108 ~~receives a certified check for the appropriate amount within 30~~
1109 ~~days after the date the check was returned due to insufficient~~
1110 ~~funds.~~
1111 (10) ~~(11)~~ Each correspondent lender shall designate a
1112 principal representative who exercises control over the business
1113 and shall maintain a form prescribed by the commission
1114 designating the principal representative. If the form is not
1115 accurately maintained, the business is considered to be operated
1116 by each officer, director, or equitable owner of a 10-percent or
1117 greater interest in the business.
1118 (11) ~~(12)~~ ~~After October 1, 2001,~~ An applicant's principal
1119 representative must pass a written test prescribed by the
1120 commission and administered by the office, or must pass an

1121 electronic test prescribed by the commission and administered by
1122 the office or a third party approved by the office, which covers
1123 primary and subordinate mortgage financing transactions and the
1124 provisions of this chapter and rules adopted under this chapter.
1125 The commission may waive by rule the examination requirement for
1126 any person who has passed a test approved by the Conference of
1127 State Bank Supervisors, the American Association of Residential
1128 Mortgage Regulators, or the United States Department of Housing
1129 and Urban Development if the test covers primary and subordinate
1130 mortgage financing transactions. The commission may set by rule
1131 a fee not to exceed $100 for taking the examination. This
1132 requirement is satisfied if the principal representative has
1133 continuously served in the capacity of a principal
1134 representative for a licensed entity under this chapter for at
1135 least 1 year and has not had a lapse in designation as a
1136 principal representative of more than 2 years before the date of
1137 the submission of the application or amendment in the case of a
1138 change in the principal representative. This requirement is also
1139 satisfied if the principal representative holds an active
1140 license as a mortgage broker in this state.
1141 (12) ~~(13)~~ A correspondent lender shall notify the office of
1142 any change in the designation of its principal representative
1143 within 30 days after the change is effective. A new principal
1144 representative shall satisfy ~~the name and address of any new~~
1145 ~~principal representative and shall document that such person has~~
1146 ~~completed~~ the educational and testing requirements of this
1147 section within 90 days after being designated as ~~upon~~ the
1148 ~~lender's designation of a~~ new principal representative. This

1149 requirement is satisfied if the principal representative has
1150 continuously served in the capacity of a principal
1151 representative for a licensed entity under this chapter for at
1152 least 1 year and has not had a lapse in designation as a
1153 principal representative of more than 2 years before the date of
1154 the submission of the application or amendment in the case of a
1155 change in the principal representative. This requirement is also
1156 satisfied if the principal representative holds an active
1157 license as a mortgage broker in this state.
1158 Section 17. Paragraph (b) of subsection (1) and subsection
1159 (2) of section 494.0064, Florida Statutes, are amended to read:
1160 494.0064 Renewal of mortgage lender's license; branch
1161 office license renewal.--
1162 (1)
1163 (b) A licensee shall also submit, as part of the renewal
1164 form, certification that during the preceding 2 years the
1165 licensee's principal representative and~~,~~ loan originators~~, and~~
1166 ~~associates~~ have completed the professional continuing education
1167 requirements of s. 494.00295.
1168 (2) The commission shall adopt rules establishing a
1169 procedure for the biennial renewal of mortgage lender's
1170 licenses, correspondent lender's licenses, and branch office
1171 licenses ~~permits~~. The commission may prescribe the form for
1172 renewal and may require an update of all information provided in
1173 the licensee's initial application.
1174 Section 18. Section 494.0065, Florida Statutes, is amended
1175 to read:
1176 494.0065 Saving clause.--

1177 (1)(a) Any person in good standing who holds an active
1178 registration pursuant to former s. 494.039 or license pursuant
1179 to former s. 521.205, or any person who acted solely as a
1180 mortgage servicer on September 30, 1991, is eligible to apply to
1181 the office for a mortgage lender's license and is eligible for
1182 licensure if the applicant:
1183 1. For at least 12 months during the period of October 1,
1184 1989, through September 30, 1991, has engaged in the business of
1185 either acting as a seller or assignor of mortgage loans or as a
1186 servicer of mortgage loans, or both;
1187 2. Has documented a minimum net worth of $25,000 in
1188 audited financial statements; and
1189 3. Has applied for licensure pursuant to this section by
1190 January 1, 1992, and paid an application fee of $100.
1191 (b) A licensee pursuant to paragraph (a) may operate a
1192 wholly owned subsidiary or affiliate for the purpose of
1193 servicing accounts if the subsidiary or affiliate is operational
1194 as of September 30, 1991. Such subsidiary or affiliate is not
1195 required to obtain a separate license, but is subject to all the
1196 requirements of a licensee under ss. 494.006-494.0077.
1197 (2) A licensee issued a license pursuant to subsection (1)
1198 may renew its mortgage lending license if it documents a minimum
1199 net worth of $25,000, according to United States generally
1200 accepted accounting principles, which must be continuously
1201 maintained as a condition to licensure. The office shall require
1202 an audited financial statement which documents such net worth.
1203 (3) The commission may prescribe by rule forms and
1204 procedures for application for licensure, and amendment and

1205 withdrawal of application for licensure, or transfer, including
1206 any existing branch offices, in accordance with subsections (4)
1207 and (5), and for renewal of licensure of licensees under this
1208 section. The office may require each applicant to provide any
1209 information reasonably necessary to determine the applicant's
1210 eligibility for licensure. An application is considered received
1211 for purposes of s. 120.60 upon receipt of a completed
1212 application form as prescribed by commission rule, a
1213 nonrefundable application fee of $500, and any other fee
1214 prescribed by law.
1215 (4)(a) Notwithstanding ss. 494.0061(5) and 494.0067(2)~~(3)~~,
1216 the ultimate equitable owner, as of the effective date of this
1217 act, of a mortgage lender licensed under this section may
1218 transfer, one time, at least 50 percent of the ownership,
1219 control, or power to vote any class of equity securities of such
1220 mortgage lender, except as provided in paragraph (b). For
1221 purposes of this subsection, satisfaction of the amount of the
1222 ownership transferred may be met in multiple transactions or in
1223 a single transaction.
1224 (b) A person who is an ultimate equitable owner on the
1225 effective date of this act may transfer, at any time, at least
1226 50 percent of the ownership, control, or power to vote any class
1227 of equity securities of such person to the person's spouse or
1228 child, and any such transferee may transfer, at any time, such
1229 ownership, control, or power to vote to a spouse or child of
1230 such transferee, in perpetuity.
1231 (c) For any transfer application filed on or after October
1232 1, 2006:

1233 1. An applicant must provide proof that the applicant's
1234 principal representative has completed 24 hours of instruction
1235 in primary and subordinate financing transactions and in the
1236 provisions of this chapter and rules adopted under this chapter.
1237 This requirement is satisfied if the principal representative
1238 has continuously served in the capacity of a principal
1239 representative for a licensed entity under this chapter for at
1240 least 1 year and has not had a lapse in designation as a
1241 principal representative of more than 2 years before the date of
1242 the submission of the application or amendment in the case of a
1243 change in the principal representative. This requirement is also
1244 satisfied if the principal representative holds an active
1245 license as a mortgage broker in this state.
1246 2. An applicant's principal representative must pass a
1247 written test prescribed by the commission and administered by
1248 the office, or must pass an electronic test prescribed by the
1249 commission and administered by the office or a third party
1250 approved by the office, which covers primary and subordinate
1251 mortgage financing transactions and the provisions of this
1252 chapter and rules adopted under this chapter. The commission may
1253 set by rule a fee not to exceed $100 for the electronic version
1254 of the mortgage broker test. The commission may waive by rule
1255 the examination requirement for any person who has passed a test
1256 approved by the Conference of State Bank Supervisors, the
1257 American Association of Residential Mortgage Regulators, or the
1258 United States Department of Housing and Urban Development if the
1259 test covers primary and subordinate mortgage financing
1260 transactions. This requirement is satisfied if the principal

1261 representative has continuously served in the capacity of a
1262 principal representative for a licensed entity under this
1263 chapter for at least 1 year and has not had a lapse in
1264 designation as a principal representative of more than 2 years
1265 before the date of the submission of the application or
1266 amendment in the case of a change in the principal
1267 representative. This requirement is also satisfied if the
1268 principal representative holds an active license as a mortgage
1269 broker in this state.
1270 (5) Each initial application for a transfer must be in the
1271 form prescribed by rule of the commission. The commission or
1272 office may require each applicant for any transfer to provide
1273 any information reasonably necessary to make a determination of
1274 the applicant's eligibility for licensure. The office shall
1275 issue the transfer of licensure to any person who submits the
1276 following documentation at least 90 days prior to the
1277 anticipated transfer:
1278 (a) A completed application form.
1279 (b) A nonrefundable fee set by rule of the commission in
1280 the amount of $500. An application is considered received for
1281 purposes of s. 120.60 upon receipt of a completed application
1282 form as prescribed by commission rule, a nonrefundable
1283 application fee of $500, and any other fee prescribed by law.
1284 (c) Audited financial statements that substantiate that
1285 the applicant has a bona fide and verifiable net worth,
1286 according to United States generally accepted accounting
1287 principles, of at least $25,000, which must be continuously
1288 maintained as a condition of licensure.

1289 (d) Documentation that the applicant is incorporated,
1290 registered, or otherwise formed as a general partnership,
1291 limited partnership, limited liability company, or other lawful
1292 entity under the laws of this state or another state of the
1293 United States.
1294 (e) A complete set of fingerprints as the commission
1295 requires by rule for ~~or office may require that~~ each designated
1296 principal representative, officer, director, control person,
1297 member, partner, or joint venturer of the applicant and the
1298 ultimate equitable owner of a 10-percent or greater interest in
1299 the applicant. A fingerprint card submitted to the office must
1300 be ~~submit a complete set of fingerprints~~ taken by an authorized
1301 law enforcement agency ~~officer~~. The office shall submit the
1302 fingerprints to the Department of Law Enforcement for state
1303 processing and the Department of Law Enforcement shall forward
1304 the fingerprints to the Federal Bureau of Investigation for
1305 federal processing. The cost of the fingerprint processing may
1306 be borne by the office, the employer, or the person subject to
1307 the background check. The Department of Law Enforcement shall
1308 submit an invoice to the office for the fingerprints received
1309 each month. The office shall screen the background results to
1310 determine if the applicant meets licensure requirements.
1311 (f) Information that the commission requires by rule
1312 concerning any designated principal representative; any officer,
1313 director, control person, member, partner, or joint venturer of
1314 the applicant or any person having the same or substantially
1315 similar status or performing substantially similar functions; or
1316 any individual who is the ultimate equitable owner of a 10-

1317 percent or greater interest in the mortgage lender. The
1318 commission may require information concerning such applicant or
1319 person, including, but not limited to, his or her full name and
1320 any other names by which he or she may have been known, age,
1321 social security number, qualifications and educational and
1322 business history, and disciplinary and criminal history.
1323 (6) Notwithstanding subsection (5), a transfer under
1324 subsection (4) may be denied if the applicant; designated
1325 principal representative;~~,~~ any principal officer, ~~or~~ director,
1326 control person, member, partner, or joint venturer of the
1327 applicant;~~,~~ or any natural person owning a 10-percent or greater
1328 interest in the applicant has committed any violation specified
1329 in s. 494.0072, or has entered a plea of nolo contendere,
1330 regardless of adjudication, or has an action pending against the
1331 applicant in any criminal prosecution or administrative
1332 enforcement action, in any jurisdiction, which involves fraud,
1333 dishonest dealing, or any act of moral turpitude.
1334 (7) A license issued in accordance with this section is
1335 not transferable or assignable except as provided in subsection
1336 (4).
1337 (8) Each person applying for a transfer of any branch
1338 office pursuant to subsection (4) must comply with the
1339 requirements of s. 494.0066.
1340 (9) Each mortgage lender shall designate a principal
1341 representative who exercises control over the business and shall
1342 keep the designation current on a form prescribed by commission
1343 rule designating the principal representative. If the
1344 information on the form is not kept current, the business is

1345 considered to be operated by each officer, director, or
1346 equitable owner of a 10-percent or greater interest in the
1347 business.
1348 (10) A lender shall notify the office of any change in the
1349 designation of its principal representative within 30 days after
1350 the change is effective. A new principal representative must
1351 satisfy the educational and testing requirements of this section
1352 within 90 days after being designated as the new principal
1353 representative. This requirement is satisfied if the principal
1354 representative has continuously served in the capacity of a
1355 principal representative for a licensed entity under this
1356 chapter for at least 1 year and has not had a lapse in
1357 designation as a principal representative of more than 2 years
1358 before the date of the submission of the application or
1359 amendment in the case of a change in the principal
1360 representative. This requirement is also satisfied if the
1361 principal representative currently holds an active license as a
1362 mortgage broker in this state.
1363 Section 19. Subsection (2) of section 494.0066, Florida
1364 Statutes, is amended to read:
1365 494.0066 Branch offices.--
1366 (2) The office shall issue a branch office license to a
1367 licensee licensed under ss. 494.006-494.0077 after the office
1368 determines that the licensee has submitted ~~upon receipt of~~ a
1369 completed branch office application form as prescribed by rule
1370 by the commission and an initial nonrefundable branch office
1371 license fee of $325. The branch office application must include
1372 the name and license number of the licensee under ss. 494.006-

1373 494.0077, the name of the licensee's employee in charge of the
1374 branch office, and the address of the branch office. The branch
1375 office license shall be issued in the name of the licensee under
1376 ss. 494.006-494.0077 and must be renewed in conjunction with the
1377 license renewal.
1378 Section 20. Section 494.0067, Florida Statutes, is amended
1379 to read:
1380 494.0067 Requirements of licensees under ss. 494.006-
1381 494.0077.--
1382 ~~(1) Each license of a mortgage lender, correspondent~~
1383 ~~mortgage lender, or branch office shall be prominently displayed~~
1384 ~~in the office for which it is issued.~~
1385 (1)~~(2)~~ Each licensee under ss. 494.006-494.0077 which
1386 makes mortgage loans on real estate in this state shall transact
1387 business from a principal place of business. Each principal
1388 place of business and each branch office shall be operated under
1389 the full charge, control, and supervision of the licensee under
1390 ss. 494.006-494.0077.
1391 (2)~~(3)~~ A license issued under ss. 494.006-494.0077 is not
1392 transferable or assignable.
1393 (3) Each licensee under ss. 494.006-494.0077 shall report,
1394 on a form prescribed by rule of the commission, any change in
1395 the information contained in any initial application form, or
1396 any amendment thereto, not later than 30 days after the change
1397 is effective.
1398 (4) Each licensee under ss. 494.006-494.0077 shall report
1399 any changes in the partners, officers, members, joint venturers,
1400 directors, or control persons of any licensee or changes in the

1401 form of business organization by written amendment in such form
1402 and at such time that the commission specifies by rule.
1403 (a) In any case in which a person or a group of persons,
1404 directly or indirectly or acting by or through one or more
1405 persons, proposes to purchase or acquire a controlling interest
1406 in a licensee, such person or group must submit an initial
1407 application for licensure as a mortgage lender or correspondent
1408 mortgage lender before such purchase or acquisition and at the
1409 time and in the form prescribed by the commission by rule.
1410 (b) As used in this subsection, the term "controlling
1411 interest" means possession of the power to direct or cause the
1412 direction of the management or policies of a company whether
1413 through ownership of securities, by contract, or otherwise. Any
1414 person who directly or indirectly has the right to vote 25
1415 percent or more of the voting securities of a company or who is
1416 entitled to 25 percent or more of the company's profits is
1417 presumed to possess a controlling interest.
1418 (c) Any addition of a designated principal representative,
1419 partner, officer, member, joint venturer, director, or control
1420 person of the applicant who does not have a controlling interest
1421 and who has not previously complied with the provisions of s.
1422 494.0061(2)(g) and (h), s. 494.0062(2)(g) and (h), or s.
1423 494.0065(5)(e) and (f) shall be subject to such provisions
1424 unless required to file an initial application in accordance
1425 with paragraph (a). If the office determines that the licensee
1426 does not continue to meet licensure requirements, the office may
1427 bring administrative action in accordance with s. 494.0072 to
1428 enforce the provisions of this section.

1429 (d) The commission shall adopt rules pursuant to ss.
1430 120.536(1) and 120.54 providing for the waiver of the
1431 application required by this subsection if the person or group
1432 of persons proposing to purchase or acquire a controlling
1433 interest in a licensee has previously complied with the
1434 provisions of s. 494.0061(2)(g) and (h), s. 494.0062(2)(g) and
1435 (h), or s. 494.0065(5)(e) and (f) with the same legal entity or
1436 is currently licensed with the office under this chapter.
1437 ~~(4) The commission or office may require each licensee~~
1438 ~~under ss. 494.006-494.0077 to report any change of address of~~
1439 ~~the principal place of business, change of address of any branch~~
1440 ~~office, or change of principal officer, director, or ultimate~~
1441 ~~equitable owner of 10 percent or more of the licensed~~
1442 ~~corporation to the office in a form prescribed by rule of the~~
1443 ~~commission not later than 30 business days after the change is~~
1444 ~~effective.~~
1445 (5) Each licensee under ss. 494.006-494.0077 shall report
1446 in a form prescribed by rule by the commission any indictment,
1447 information, charge, conviction, plea of nolo contendere, or
1448 plea of guilty to any crime or administrative violation that
1449 involves fraud, dishonest dealing, or any other act of moral
1450 turpitude, in any jurisdiction, by the licensee under ss.
1451 494.006-494.0077 or any principal officer, director, or ultimate
1452 equitable owner of 10 percent or more of the licensed
1453 corporation, not later than 30 business days after the
1454 indictment, information, charge, conviction, or final
1455 administrative action.
1456 (6) Each licensee under ss. 494.006-494.0077 shall report

1457 any action in bankruptcy, voluntary or involuntary, to the
1458 office, not later than 7 business days after the action is
1459 instituted.
1460 (7) Each licensee under ss. 494.006-494.0077 shall
1461 designate a registered agent in this state for service of
1462 process.
1463 (8) Each licensee under ss. 494.006-494.0077 shall provide
1464 an applicant for a mortgage loan a good faith estimate of the
1465 costs the applicant can reasonably expect to pay in obtaining a
1466 mortgage loan. The good faith estimate of costs shall be mailed
1467 or delivered to the applicant within a reasonable time after the
1468 licensee receives a written loan application from the applicant.
1469 The estimate of costs may be provided to the applicant by a
1470 person other than the licensee making the loan. The commission
1471 may adopt rules that set forth the disclosure requirements of
1472 this section.
1473 (9) On or before April 30, 2000, each mortgage lender or
1474 correspondent mortgage lender shall file an initial report
1475 stating the full legal name, residential address, social
1476 security number, date of birth, mortgage broker license number,
1477 date of hire, and, if applicable, date of termination for each
1478 person who acted as a loan originator or an associate of the
1479 mortgage lender or correspondent mortgage lender during the
1480 immediate preceding quarter. Thereafter, a mortgage lender or
1481 correspondent mortgage lender shall file a report only if a
1482 person became or ceased to be a loan originator or an associate
1483 of the mortgage lender or correspondent mortgage lender during
1484 the immediate preceding quarter. Such report shall be filed

1485 within 30 days after the last day of each calendar quarter and
1486 shall contain the full legal name, residential address, social
1487 security number, date of birth, date of hire and, if applicable,
1488 the mortgage broker license number and date of termination of
1489 each person who became or ceased to be a loan originator or an
1490 associate of the mortgage lender or correspondent mortgage
1491 lender during the immediate preceding quarter. The commission
1492 shall prescribe, by rule, the procedures for filing reports
1493 required by this subsection.
1494 (10)(a) Each licensee shall require the principal
1495 representative and all loan originators ~~or associates~~ who
1496 perform services for the licensee to complete 14 hours of
1497 professional continuing education during each biennial license
1498 period. The education shall cover primary and subordinate
1499 mortgage financing transactions and the provisions of this
1500 chapter and the rules adopted under this chapter.
1501 (b) The licensee shall maintain records of such training
1502 for a period of 4 years, including records of the content of and
1503 hours designated for each program and the date and location of
1504 the program.
1505 (c) Evidence of completion of such programs shall be
1506 included with the licensee's renewal application.
1507 Section 21. Paragraphs (s), (t), and (u) are added to
1508 subsection (2) of section 494.0072, Florida Statutes, and
1509 subsection (3) of that section is amended, to read:
1510 494.0072 Administrative penalties and fines; license
1511 violations.--
1512 (2) Each of the following acts constitutes a ground for

1513 which the disciplinary actions specified in subsection (1) may
1514 be taken:
1515 (s) Payment to the office for a license or permit with a
1516 check or electronic transmission of funds that is dishonored by
1517 the applicant's or licensee's financial institution.
1518 (t) Having a final judgment entered against the applicant
1519 or licensee in a civil action upon grounds of fraud,
1520 embezzlement, misrepresentation, or deceit.
1521 (u)1. Having been the subject of any decision, finding,
1522 injunction, suspension, prohibition, revocation, denial,
1523 judgment, or administrative order by any court of competent
1524 jurisdiction, administrative law judge, state or federal agency,
1525 national securities exchange, national commodities exchange,
1526 national option exchange, national securities association,
1527 national commodities association, or national option association
1528 involving a violation of any federal or state securities or
1529 commodities law, or any rule or regulation adopted under such
1530 law, or involving a violation of any rule or regulation of any
1531 national securities, commodities, or options exchange or
1532 association.
1533 2. Having been the subject of any injunction or adverse
1534 administrative order by a state or federal agency regulating
1535 banking, insurance, finance or small loan companies, real
1536 estate, mortgage brokers or lenders, money transmitters, or
1537 other related or similar industries.
1538 (3) A mortgage lender or correspondent mortgage lender is
1539 subject to the disciplinary actions specified in subsection (1)
1540 if any officer, member, director, control person, joint

1541 venturer, or ultimate equitable owner of a 10-percent or greater
1542 interest in the mortgage lender or correspondent mortgage
1543 lender, associate, or employee of the mortgage lender or
1544 correspondent mortgage lender violates any provision of
1545 subsection (2).
1546 Section 22. Subsection (2) of section 494.00721, Florida
1547 Statutes, is amended to read:
1548 494.00721 Net worth.--
1549 (2) If a mortgage lender or correspondent mortgage lender
1550 fails to satisfy the net worth requirements, the mortgage lender
1551 or correspondent mortgage lender shall immediately cease taking
1552 any new mortgage loan applications. Thereafter, the mortgage
1553 lender or correspondent mortgage lender shall have up to 60 days
1554 within which to satisfy the net worth requirements. If the
1555 licensee makes the office aware, prior to an examination, that
1556 the licensee no longer meets the net worth requirements, the
1557 mortgage lender or correspondent mortgage lender shall have 120
1558 days within which to satisfy the net worth requirements. A
1559 mortgage lender or correspondent mortgage lender shall not
1560 resume acting as a mortgage lender or correspondent mortgage
1561 lender without written authorization from the office, which
1562 authorization shall be granted if the mortgage lender or
1563 correspondent mortgage lender provides the office with
1564 documentation which satisfies the requirements of s.
1565 494.0061(2)~~(1)~~(c), s. 494.0062(2)~~(1)~~(c), or s. 494.0065(2),
1566 whichever is applicable.
1567 Section 23. Paragraph (c) of subsection (3) of section
1568 501.137, Florida Statutes, is amended to read:

1569 501.137 Mortgage lenders; tax and insurance payments from
1570 escrow accounts; duties.--
1571 (3)
1572 (c) If the lender violates paragraph (a) and the premium
1573 payment is more than 90 days overdue or if the insurer refuses
1574 to reinstate the insurance policy, the lender shall pay the
1575 difference between the cost of the previous insurance policy and
1576 a new, comparable insurance policy for a period of 2 years. If
1577 the lender refuses, the lender is liable for the reasonable
1578 attorney's fees and costs of the property owner for a violation
1579 of this section.
1580 Section 24. Subsection (8) is added to section 516.01,
1581 Florida Statutes, to read:
1582 516.01 Definitions.--As used in this chapter, the term:
1583 (8) "Control person" means an individual, partnership,
1584 corporation, trust, or other organization that possesses the
1585 power, directly or indirectly, to direct the management or
1586 policies of a company, whether through ownership of securities,
1587 by contract, or otherwise. A person is presumed to control a
1588 company if, with respect to a particular company, that person:
1589 (a) Is a director, general partner, or officer exercising
1590 executive responsibility or having similar status or functions;
1591 (b) Directly or indirectly may vote 10 percent or more of
1592 a class of a voting security or sell or direct the sale of 10
1593 percent or more of a class of voting securities; or
1594 (c) In the case of a partnership, may receive upon
1595 dissolution or has contributed 10 percent or more of the
1596 capital.

1597 Section 25. Section 516.03, Florida Statutes, is amended
1598 to read:
1599 516.03 Application for license; fees; etc.--
1600 (1) APPLICATION.--Application for a license to make loans
1601 under this chapter shall be in the form prescribed by rule of
1602 the commission. The commission may require each applicant to
1603 provide any information reasonably necessary to determine the
1604 applicant's eligibility for licensure. The applicant shall also
1605 provide information that the office requires concerning any
1606 officer, director, control person, member, partner, or joint
1607 venturer of the applicant or any person having the same or
1608 substantially similar status or performing substantially similar
1609 functions or concerning any individual who is the ultimate
1610 equitable owner of a 10-percent or greater interest in the
1611 applicant. The office may require information concerning any
1612 such applicant or person, including, but not limited to, his or
1613 her full name and any other names by which he or she may have
1614 been known, age, social security number, residential history,
1615 qualifications, educational and business history, and
1616 disciplinary and criminal history. The applicant must provide
1617 evidence of liquid assets of at least $25,000~~, and shall contain~~
1618 ~~the name, residence and business addresses of the applicant and,~~
1619 ~~if the applicant is a copartnership or association, of every~~
1620 ~~member thereof and, if a corporation, of each officer and~~
1621 ~~director thereof, also the county and municipality with the~~
1622 ~~street and number or approximate location where the business is~~
1623 ~~to be conducted, and such further relevant information as the~~
1624 ~~commission or office may require~~. At the time of making such

1625 application the applicant shall pay to the office a
1626 nonrefundable biennial license fee of $625. Applications, except
1627 for applications to renew or reactivate a license, must also be
1628 accompanied by a nonrefundable ~~an~~ investigation fee of $200. An
1629 application is considered received for purposes of s. 120.60
1630 upon receipt of a completed application form as prescribed by
1631 commission rule, a nonrefundable application fee of $625, and
1632 any other fee prescribed by law. The commission may adopt rules
1633 requiring ~~to allow~~ electronic submission of any form, document,
1634 or fee required by this act if such rules reasonably accommodate
1635 technological or financial hardship. The commission may
1636 prescribe by rule requirements and procedures for obtaining an
1637 exemption due to a technological or financial hardship.
1638 (2) FEES.--Fees ~~herein~~ provided for in this section shall
1639 be collected by the office and shall be turned into the State
1640 Treasury to the credit of the regulatory trust fund under the
1641 office. The office shall have full power to employ such
1642 examiners or clerks to assist the office as may from time to
1643 time be deemed necessary and fix their compensation. The
1644 commission may adopt rules requiring ~~to allow~~ electronic
1645 submission of any fee required by this section if such rules
1646 reasonably accommodate technological or financial hardship. The
1647 commission may prescribe by rule requirements and procedures for
1648 obtaining an exemption due to a technological or financial
1649 hardship.
1650 Section 26. Paragraph (a) of subsection (3) of section
1651 516.031, Florida Statutes, is amended to read:
1652 516.031 Finance charge; maximum rates.--

1653 (3) OTHER CHARGES.--
1654 (a) In addition to the interest, delinquency, and
1655 insurance charges herein provided for, no further or other
1656 charges or amount whatsoever for any examination, service,
1657 commission, or other thing or otherwise shall be directly or
1658 indirectly charged, contracted for, or received as a condition
1659 to the grant of a loan, except:
1660 1. An amount not to exceed $25 ~~$10~~ to reimburse a portion
1661 of the costs for investigating the character and credit of the
1662 person applying for the loan;
1663 2. An annual fee of $25 on the anniversary date of each
1664 line-of-credit account;
1665 3. Charges paid for brokerage fee on a loan or line of
1666 credit of more than $10,000, title insurance, and the appraisal
1667 of real property offered as security when paid to a third party
1668 and supported by an actual expenditure;
1669 4. Intangible personal property tax on the loan note or
1670 obligation when secured by a lien on real property;
1671 5. The documentary excise tax and lawful fees, if any,
1672 actually and necessarily paid out by the licensee to any public
1673 officer for filing, recording, or releasing in any public office
1674 any instrument securing the loan, which fees may be collected
1675 when the loan is made or at any time thereafter;
1676 6. The premium payable for any insurance in lieu of
1677 perfecting any security interest otherwise required by the
1678 licensee in connection with the loan, if the premium does not
1679 exceed the fees which would otherwise be payable, which premium
1680 may be collected when the loan is made or at any time

1681 thereafter;
1682 7. Actual and reasonable attorney's fees and court costs
1683 as determined by the court in which suit is filed;
1684 8. Actual and commercially reasonable expenses of
1685 repossession, storing, repairing and placing in condition for
1686 sale, and selling of any property pledged as security; or
1687 9. A delinquency charge not to exceed $10 for each payment
1688 in default for a period of not less than 10 days, if the charge
1689 is agreed upon, in writing, between the parties before imposing
1690 the charge.
1691
1692 Any charges, including interest, in excess of the combined total
1693 of all charges authorized and permitted by this chapter
1694 constitute a violation of chapter 687 governing interest and
1695 usury, and the penalties of that chapter apply. In the event of
1696 a bona fide error, the licensee shall refund or credit the
1697 borrower with the amount of the overcharge immediately but
1698 within 20 days from the discovery of such error.
1699 Section 27. Section 516.05, Florida Statutes, is amended
1700 to read:
1701 516.05 License.--
1702 (1) Upon the filing of an application for a license and
1703 payment of all applicable fees, the office shall, unless the
1704 application is to renew or reactivate an existing license, make
1705 an investigation of the facts concerning the applicant's
1706 background ~~proposed activities~~. If the office determines that a
1707 license should be granted, it shall issue the license for a
1708 period not to exceed 2 years. Biennial licensure periods and

1709 procedures for renewal of licenses shall be established by the
1710 rule of the commission. If the office determines that grounds
1711 exist under this chapter for denial of an application other than
1712 an application to renew a license, it shall deny such
1713 application~~, return to the applicant the sum paid as a license~~
1714 ~~fee, and retain the investigation fee~~.
1715 (2) A license that is not renewed at the end of the
1716 biennium established by the commission shall automatically
1717 revert to inactive status. An inactive license may be
1718 reactivated upon submission of a completed reactivation
1719 application, payment of the biennial license fee, and payment of
1720 a reactivation fee which shall equal the biennial license fee. A
1721 license expires on the date at which it has been inactive for 6
1722 months.
1723 (3) Only one place of business for the purpose of making
1724 loans under this chapter may be maintained under one license,
1725 but the office may issue additional licenses to a licensee upon
1726 compliance with all the provisions of this chapter governing
1727 issuance of a single license.
1728 (4) Each licensee shall report, on a form prescribed by
1729 rule of the commission, any change to the information contained
1730 in any initial application form or any amendment to such
1731 application not later than 30 days after the change is
1732 effective.
1733 (5) Each licensee shall report any changes in the
1734 partners, officers, members, joint venturers, directors, or
1735 control persons of any licensee, or changes in the form of
1736 business organization, by written amendment in such form and at

1737 such time as the commission specifies by rule.
1738 (a) In any case in which a person or a group of persons,
1739 directly or indirectly or acting by or through one or more
1740 persons, proposes to purchase or acquire a controlling interest
1741 in a licensee, such person or group must submit an initial
1742 application for licensure before such purchase or acquisition at
1743 such time and in such form as the commission prescribes by rule.
1744 (b) As used in this subsection, the term "controlling
1745 interest" means possession of the power to direct or cause the
1746 direction of the management or policies of a company whether
1747 through ownership of securities, by contract, or otherwise. Any
1748 person who directly or indirectly has the right to vote 25
1749 percent or more of the voting securities of a company or is
1750 entitled to 25 percent or more of the company's profits is
1751 presumed to possess a controlling interest.
1752 (c) Any addition of a partner, officer, member, joint
1753 venturer, director, or control person of the applicant who does
1754 not have a controlling interest and who has not previously
1755 complied with the provisions of s. 516.03(1) shall be subject to
1756 such provisions unless required to file an initial application
1757 in accordance with paragraph (a). If the office determines that
1758 the licensee does not continue to meet licensure requirements,
1759 the office may bring administrative action in accordance with s.
1760 516.07 to enforce the provisions of this chapter.
1761 (d) The commission shall adopt rules pursuant to ss.
1762 120.536(1) and 120.54 providing for the waiver of the
1763 application required by this subsection if the person or group
1764 of persons proposing to purchase or acquire a controlling

1765 interest in a licensee has previously complied with the
1766 provisions of s. 516.03(1) with the same legal entity or is
1767 currently licensed with the office under this chapter.
1768 ~~(4) Prior to relocating his or her place of business, a~~
1769 ~~licensee must file with the office, in the manner prescribed by~~
1770 ~~commission rule, notice of the relocation.~~
1771 (6) ~~(5)~~ A licensee may conduct the business of making loans
1772 under this chapter within a place of business in which other
1773 business is solicited or engaged in, unless the office shall
1774 find that the conduct of such other business by the licensee
1775 results in an evasion of this chapter. Upon such finding, the
1776 office shall order the licensee to desist from such evasion;
1777 provided, however, that no license shall be granted to or
1778 renewed for any person or organization engaged in the pawnbroker
1779 business.
1780 ~~(6) If any person purchases substantially all of the~~
1781 ~~assets of any existing licensed place of business, the purchaser~~
1782 ~~shall give immediate notice thereof to the office and shall be~~
1783 ~~granted a 90-day temporary license for the place of business~~
1784 ~~within 10 days after the office's receipt of an application for~~
1785 ~~a permanent license. Issuance of a temporary license for a place~~
1786 ~~of business nullifies the existing license for the place of~~
1787 ~~business, and the temporary licensee is subject to any~~
1788 ~~disciplinary action provided for by this chapter.~~
1789 (7) Licenses are not transferable or assignable. A
1790 licensee may invalidate any license by delivering it to the
1791 office with a written notice of the delivery, but such delivery
1792 does not affect any civil or criminal liability or the authority

1793 to enforce this chapter for acts committed in violation thereof.
1794 (8) The office may refuse to process an initial
1795 application for a license if the applicant or any person with
1796 power to direct the management or policies of the applicant's
1797 business is the subject of a pending criminal prosecution in any
1798 jurisdiction until conclusion of such criminal prosecution.
1799 (9) A licensee that is the subject of a voluntary or
1800 involuntary bankruptcy filing must report such filing to the
1801 office within 7 business days after the filing date.
1802 Section 28. Subsection (1) of section 516.07, Florida
1803 Statutes, is amended to read:
1804 516.07 Grounds for denial of license or for disciplinary
1805 action.--
1806 (1) The following acts are violations of this chapter and
1807 constitute grounds for denial of an application for a license to
1808 make consumer finance loans and grounds for any of the
1809 disciplinary actions specified in subsection (2):
1810 (a) A material misstatement of fact in an application for
1811 a license.~~;~~
1812 (b) Failure to maintain liquid assets of at least $25,000
1813 at all times for the operation of business at a licensed
1814 location or proposed location.~~;~~
1815 (c) Failure to demonstrate financial responsibility,
1816 experience, character, or general fitness, such as to command
1817 the confidence of the public and to warrant the belief that the
1818 business operated at the licensed or proposed location is
1819 lawful, honest, fair, efficient, and within the purposes of this
1820 chapter.~~;~~

1821 (d) The violation, either knowingly or without the
1822 exercise of due care, of any provision of this chapter, any rule
1823 or order adopted under this chapter, or any written agreement
1824 entered into with the office.~~;~~
1825 (e) Any act of fraud, misrepresentation, or deceit,
1826 regardless of reliance by or damage to a borrower, or any
1827 illegal activity, where such acts are in connection with a loan
1828 under this chapter. Such acts include, but are not limited to:
1829 1. Willful imposition of illegal or excessive charges; or
1830 2. Misrepresentation, circumvention, or concealment of any
1831 matter required to be stated or furnished to a borrower.~~;~~
1832 (f) The use of unreasonable collection practices or of
1833 false, deceptive, or misleading advertising, where such acts are
1834 in connection with the operation of a business to make consumer
1835 finance loans.~~;~~
1836 (g) Any violation of part III of chapter 817 or part II of
1837 chapter 559 or of any rule adopted under part II of chapter
1838 559.~~;~~
1839 (h) Failure to maintain, preserve, and keep available for
1840 examination, all books, accounts, or other documents required by
1841 this chapter, by any rule or order adopted under this chapter,
1842 or by any agreement entered into with the office.~~;~~
1843 (i) Refusal to permit inspection of books and records in
1844 an investigation or examination by the office or refusal to
1845 comply with a subpoena issued by the office.~~;~~
1846 (j) Pleading nolo contendere to, or having been convicted
1847 or found guilty of, a crime involving fraud, dishonest dealing,
1848 or any act of moral turpitude, regardless of whether

1849 adjudication is withheld.~~;~~
1850 (k) Paying money or anything else of value, directly or
1851 indirectly, to any person as compensation, inducement, or reward
1852 for referring loan applicants to a licensee.~~;~~
1853 (l) Allowing any person other than the licensee to use the
1854 licensee's business name, address, or telephone number in an
1855 advertisement.~~;~~
1856 (m) Accepting or advertising that the licensee accepts
1857 money on deposit or as consideration for the issuance or
1858 delivery of certificates of deposit, savings certificates, or
1859 similar instruments, except to the extent permitted under
1860 chapter 517.~~; or~~
1861 (n) Failure to pay any fee, charge, or fine imposed or
1862 assessed pursuant to this chapter or any rule adopted under this
1863 chapter.
1864 (o) Using the name or logo of a financial institution, as
1865 defined in s. 655.005(1), or its affiliates or subsidiaries when
1866 marketing or soliciting existing or prospective customers if
1867 such marketing materials are used without the written consent of
1868 the financial institution and in a manner that would lead a
1869 reasonable person to believe that the material or solicitation
1870 originated from, was endorsed by, or is related to or the
1871 responsibility of the financial institution or its affiliates or
1872 subsidiaries.
1873 (p) Payment to the office for a license or permit with a
1874 check or electronic transmission of funds that is dishonored by
1875 the applicant's or licensee's financial institution.
1876 Section 29. Section 516.08, Florida Statutes, is repealed.

1877 Section 30. Subsection (3) is added to section 516.12,
1878 Florida Statutes, to read:
1879 516.12 Records to be kept by licensee.--
1880 (3) The commission may prescribe by rule the minimum
1881 information to be shown in the books, accounts, records, and
1882 documents of licensees for purposes of enabling the office to
1883 determine the licensee's compliance with ss. 516.001-516.36. In
1884 addition, the commission may prescribe by rule the requirements
1885 for the destruction of books, accounts, records, and documents
1886 retained by the licensee after completion of the time period
1887 specified in subsection (1).
1888 Section 31. Section 516.19, Florida Statutes, is amended
1889 to read:
1890 516.19 Penalties.--Any person who violates any of the
1891 provisions of s. 516.02, s. 516.031, s. 516.05(3), ~~s. 516.05(4),~~
1892 s. 516.05(6) ~~(5)~~, or s. 516.07(1)(e) is guilty of a misdemeanor
1893 of the first degree, punishable as provided in s. 775.082 or s.
1894 775.083.
1895 Section 32. Subsection (4) of section 517.021, Florida
1896 Statutes, is amended to read:
1897 517.021 Definitions.--When used in this chapter, unless
1898 the context otherwise indicates, the following terms have the
1899 following respective meanings:
1900 (4) "Branch office" means any location in this state of a
1901 dealer or investment adviser at which one or more associated
1902 persons regularly conduct the business of rendering investment
1903 advice or effecting any transactions in, or inducing or
1904 attempting to induce the purchase or sale of, any security or

1905 any location that is held out as such. The commission may adopt
1906 by rule exceptions to this definition for dealers in order to
1907 maintain consistency with the definition of a branch office used
1908 by self-regulatory organizations authorized by the Securities
1909 and Exchange Commission, including, but not limited to, the
1910 National Association of Securities Dealers or the New York Stock
1911 Exchange. The commission may adopt by rule exceptions to this
1912 definition for investment advisers ~~office of a dealer or~~
1913 ~~investment adviser located in this state, other than the~~
1914 ~~principal office of the dealer or investment adviser, which~~
1915 ~~nonprincipal office is owned or controlled by the dealer or~~
1916 ~~investment adviser for the purpose of conducting a securities~~
1917 ~~business~~.
1918 Section 33. Subsection (9) of section 517.051, Florida
1919 Statutes, is amended to read:
1920 517.051 Exempt securities.--The exemptions provided herein
1921 from the registration requirements of s. 517.07 are self-
1922 executing and do not require any filing with the office prior to
1923 claiming such exemption. Any person who claims entitlement to
1924 any of these exemptions bears the burden of proving such
1925 entitlement in any proceeding brought under this chapter. The
1926 registration provisions of s. 517.07 do not apply to any of the
1927 following securities:
1928 (9) A security issued by a corporation organized and
1929 operated exclusively for religious, educational, benevolent,
1930 fraternal, charitable, or reformatory purposes and not for
1931 pecuniary profit, no part of the net earnings of which
1932 corporation inures to the benefit of any private stockholder or

1933 individual, or any security of a fund that is excluded from the
1934 definition of an investment company under s. 3(c)(10)(B) of the
1935 Investment Company Act of 1940; provided that no person shall
1936 directly or indirectly offer or sell securities under this
1937 subsection except by an offering circular containing full and
1938 fair disclosure, as prescribed by the rules of the commission,
1939 of all material information, including, but not limited to, a
1940 description of the securities offered and terms of the offering,
1941 a description of the nature of the issuer's business, a
1942 statement of the purpose of the offering and the intended
1943 application by the issuer of the proceeds thereof, and financial
1944 statements of the issuer prepared in conformance with United
1945 States generally accepted accounting principles. Section 6(c) of
1946 the Philanthropy Protection Act of 1995, Pub. L. No. 104-62,
1947 shall not preempt any provision of this chapter.
1948 Section 34. Subsection (18) of section 517.061, Florida
1949 Statutes, is amended to read:
1950 517.061 Exempt transactions.--The exemption for each
1951 transaction listed below is self-executing and does not require
1952 any filing with the office prior to claiming such exemption. Any
1953 person who claims entitlement to any of the exemptions bears the
1954 burden of proving such entitlement in any proceeding brought
1955 under this chapter. The registration provisions of s. 517.07 do
1956 not apply to any of the following transactions; however, such
1957 transactions are subject to the provisions of ss. 517.301,
1958 517.311, and 517.312:
1959 (18) The offer or sale of any security effected by or
1960 through a person in compliance with ~~registered pursuant to~~ s.

1961 517.12(17).
1962 Section 35. Paragraph (g) of subsection (3) of section
1963 517.081, Florida Statutes, is amended to read:
1964 517.081 Registration procedure.--
1965 (3) The office may require the applicant to submit to the
1966 office the following information concerning the issuer and such
1967 other relevant information as the office may in its judgment
1968 deem necessary to enable it to ascertain whether such securities
1969 shall be registered pursuant to the provisions of this section:
1970 (g)1. A specimen copy of the security and a copy of any
1971 circular, prospectus, advertisement, or other description of
1972 such securities.
1973 2. The commission shall adopt a form for a simplified
1974 offering circular to be used solely by corporations to register,
1975 under this section, securities of the corporation that are sold
1976 in offerings in which the aggregate offering price in any
1977 consecutive 12-month period does not exceed the amount provided
1978 in s. 3(b) of the Securities Act of 1933. The following issuers
1979 shall not be eligible to submit a simplified offering circular
1980 adopted pursuant to this subparagraph:
1981 a. An issuer seeking to register securities for resale by
1982 persons other than the issuer.
1983 b. An issuer who is subject to any of the
1984 disqualifications described in 17 C.F.R. s. 230.262, adopted
1985 pursuant to the Securities Act of 1933, or who has been or is
1986 engaged or is about to engage in an activity that would be
1987 grounds for denial, revocation, or suspension under s. 517.111.
1988 For purposes of this subparagraph, an issuer includes an

1989 issuer's director, officer, shareholder who owns at least 10
1990 percent of the shares of the issuer, promoter, or selling agent
1991 of the securities to be offered or any officer, director, or
1992 partner of such selling agent.
1993 c. An issuer who is a development-stage company that
1994 either has no specific business plan or purpose or has indicated
1995 that its business plan is to merge with an unidentified company
1996 or companies.
1997 d. An issuer of offerings in which the specific business
1998 or properties cannot be described.
1999 e. Any issuer the office determines is ineligible if the
2000 form would not provide full and fair disclosure of material
2001 information for the type of offering to be registered by the
2002 issuer.
2003 f. Any corporation which has failed to provide the office
2004 the reports required for a previous offering registered pursuant
2005 to this subparagraph.
2006
2007 As a condition precedent to qualifying for use of the simplified
2008 offering circular, a corporation shall agree to provide the
2009 office with an annual financial report containing a balance
2010 sheet as of the end of the issuer's fiscal year and a statement
2011 of income for such year, prepared in accordance with United
2012 States generally accepted accounting principles and accompanied
2013 by an independent accountant's report. If the issuer has more
2014 than 100 security holders at the end of a fiscal year, the
2015 financial statements must be audited. Annual financial reports
2016 must be filed with the office within 90 days after the close of

2017 the issuer's fiscal year for each of the first 5 years following
2018 the effective date of the registration.
2019 Section 36. Subsections (6), (7), (10), (11), (15), and
2020 (17) of section 517.12, Florida Statutes, are amended to read:
2021 517.12 Registration of dealers, associated persons,
2022 investment advisers, and branch offices.--
2023 (6) A dealer, associated person, investment adviser, or
2024 branch office, in order to obtain registration, must file with
2025 the office a written application, on a form which the commission
2026 may by rule prescribe~~, verified under oath~~. The commission may
2027 establish, by rule, procedures for depositing fees and filing
2028 documents by electronic means provided such procedures provide
2029 the office with the information and data required by this
2030 section. Each dealer or investment adviser must also file an
2031 irrevocable written consent to service of civil process similar
2032 to that provided for in s. 517.101. The application shall
2033 contain such information as the commission or office may require
2034 concerning such matters as:
2035 (a) The name of the applicant and the address of its
2036 principal office and each office in this state.
2037 (b) The applicant's form and place of organization; and,
2038 if the applicant is a corporation, a copy of its articles of
2039 incorporation and amendments to the articles of incorporation
2040 or, if a partnership, a copy of the partnership agreement.
2041 (c) The applicant's proposed method of doing business and
2042 financial condition and history, including a certified financial
2043 statement showing all assets and all liabilities, including
2044 contingent liabilities of the applicant as of a date not more

2045 than 90 days prior to the filing of the application.
2046 (d) The names and addresses of all associated persons of
2047 the applicant to be employed in this state and the offices to
2048 which they will be assigned.
2049 (7) The application shall also contain such information as
2050 the commission or office may require about the applicant; any
2051 partner, officer, or director of the applicant or any person
2052 having a similar status or performing similar functions; any
2053 person directly or indirectly controlling the applicant; or any
2054 employee of a dealer or of an investment adviser rendering
2055 investment advisory services. Each applicant shall file a
2056 complete set of fingerprints. A fingerprint card submitted to
2057 the office must be taken by an authorized law enforcement agency
2058 ~~officer~~. The office shall submit the ~~Such~~ fingerprints ~~shall be~~
2059 ~~submitted~~ to the Department of Law Enforcement for state
2060 processing and the Department of Law Enforcement shall forward
2061 the fingerprints to ~~or~~ the Federal Bureau of Investigation for
2062 ~~state and~~ federal processing. The cost of the fingerprint
2063 processing may be borne by the office, the employer, or the
2064 person subject to the background check. The Department of Law
2065 Enforcement shall submit an invoice to the office for the
2066 fingerprints received each month. The office shall screen the
2067 background results to determine if the applicant meets licensure
2068 requirements. The commission may waive, by rule, the requirement
2069 that applicants must file a set of fingerprints or the
2070 requirement that such fingerprints must be processed by the
2071 Department of Law Enforcement or the Federal Bureau of
2072 Investigation. The commission or office may require information

2073 about any such applicant or person concerning such matters as:
2074 (a) His or her full name, and any other names by which he
2075 or she may have been known, and his or her age, social security
2076 number, photograph, qualifications, and educational and business
2077 history.
2078 (b) Any injunction or administrative order by a state or
2079 federal agency, national securities exchange, or national
2080 securities association involving a security or any aspect of the
2081 securities business and any injunction or administrative order
2082 by a state or federal agency regulating banking, insurance,
2083 finance, or small loan companies, real estate, mortgage brokers,
2084 or other related or similar industries, which injunctions or
2085 administrative orders relate to such person.
2086 (c) His or her conviction of, or plea of nolo contendere
2087 to, a criminal offense or his or her commission of any acts
2088 which would be grounds for refusal of an application under s.
2089 517.161.
2090 (d) The names and addresses of other persons of whom the
2091 office may inquire as to his or her character, reputation, and
2092 financial responsibility.
2093 (10) An applicant for registration shall pay an assessment
2094 fee of $200, in the case of a dealer or investment adviser, or
2095 $40, in the case of an associated person. The assessment fee of
2096 an associated person shall be reduced to $30, but only after the
2097 office determines, by final order, that sufficient funds have
2098 been allocated to the Securities Guaranty Fund pursuant to s.
2099 517.1203 to satisfy all valid claims filed in accordance with s.
2100 517.1203(2) and after all amounts payable under any service

2101 contract entered into by the office pursuant to s. 517.1204, and
2102 all notes, bonds, certificates of indebtedness, other
2103 obligations, or evidences of indebtedness secured by such notes,
2104 bonds, certificates of indebtedness, or other obligations, have
2105 been paid or provision has been made for the payment of such
2106 amounts, notes, bonds, certificates of indebtedness, other
2107 obligations, or evidences of indebtedness. An associated person
2108 may ~~not having current fingerprint cards filed with the National~~
2109 ~~Association of Securities Dealers or a national securities~~
2110 ~~exchange registered with the Securities and Exchange Commission~~
2111 ~~shall~~ be assessed an additional fee to cover the cost for the
2112 ~~said~~ fingerprint cards to be processed by the office. Such fee
2113 shall be determined by rule of the commission. Each dealer and
2114 each investment adviser shall pay an assessment fee of $100 for
2115 each office in this state~~, except its designated principal~~
2116 ~~office~~. Such fees become the revenue of the state, except for
2117 those assessments provided for under s. 517.131(1) until such
2118 time as the Securities Guaranty Fund satisfies the statutory
2119 limits, and are not returnable in the event that registration is
2120 withdrawn or not granted.
2121 (11) If the office finds that the applicant is of good
2122 repute and character and has complied with the provisions of
2123 this chapter and the rules made pursuant hereto, it shall
2124 register the applicant. The registration of each dealer,
2125 investment adviser, branch office, and associated person expires
2126 ~~will expire~~ on December 31 of the year the registration became
2127 effective unless the registrant has renewed his or her
2128 registration on or before that date. The commission may

2129 establish by rule procedures for renewing the registration of a
2130 branch office through the Central Registration Depository~~, and~~
2131 ~~the registration of each branch office will expire on March 31,~~
2132 ~~of the year in which it became effective unless the registrant~~
2133 ~~has renewed its registration on or before that date~~.
2134 Registration may be renewed by furnishing such information as
2135 the commission may require, together with payment of the fee
2136 required in subsection (10) for dealers, investment advisers,
2137 associated persons, or branch offices and the payment of any
2138 amount lawfully due and owing to the office pursuant to any
2139 order of the office or pursuant to any agreement with the
2140 office. Any dealer, investment adviser, or associated person
2141 registrant who has not renewed a registration by the time the
2142 current registration expires may request reinstatement of such
2143 registration by filing with the office, on or before January 31
2144 of the year following the year of expiration, such information
2145 as may be required by the commission, together with payment of
2146 the fee required in subsection (10) for dealers, investment
2147 advisers, or associated persons and a late fee equal to the
2148 amount of such fee. Any reinstatement of registration granted by
2149 the office during the month of January shall be deemed effective
2150 retroactive to January 1 of that year.
2151 (15)(a) In order to facilitate uniformity and streamline
2152 procedures for persons who are subject to registration in
2153 multiple jurisdictions, the commission may adopt by rule uniform
2154 forms that have been approved by the Securities and Exchange
2155 Commission, and any subsequent amendments to such forms, if the
2156 forms are substantially consistent with the provisions of this

2157 chapter. Uniform forms that the commission may adopt to
2158 administer this section include, but are not limited to:
2159 1. Form BR, Uniform Branch Office Registration Form,
2160 adopted October 2005.
2161 2. Form U4, Uniform Application for Securities Industry
2162 Registration or Transfer, adopted October 2005.
2163 3. Form U5, Uniform Termination Notice for Securities
2164 Industry Registration, adopted October 2005.
2165 4. Form ADV, Uniform Application for Investment Adviser
2166 Registration, adopted October 2003.
2167 5. Form ADV-W, Notice of Withdrawal from Registration as
2168 an Investment Adviser, adopted October 2003.
2169 6. Form BD, Uniform Application for Broker-Dealer
2170 Registration, adopted July 1999.
2171 7. Form BDW, Uniform Request for Broker-Dealer Withdrawal,
2172 adopted August 1999.
2173 (b) In lieu of filing with the office the applications
2174 specified in subsection (6), the fees required by subsection
2175 (10), the renewals required by subsection (11), and the
2176 termination notices required by subsection (12), the commission
2177 may by rule establish procedures for the deposit of such fees
2178 and documents with the Central Registration Depository or the
2179 Investment Adviser Registration Depository of the National
2180 Association of Securities Dealers, Inc., as developed under
2181 contract with the North American Securities Administrators
2182 Association, Inc.~~; provided, however, that such procedures shall~~
2183 ~~provide the office with the information and data as required by~~
2184 ~~this section.~~

2185 (17)(a) A dealer that is located in Canada, does not have
2186 an ~~and has no~~ office or other physical presence in this state,
2187 and has made a notice filing in accordance with this subsection
2188 is exempt from the registration requirements of this section and
2189 may~~, provided the dealer is registered in accordance with this~~
2190 ~~section,~~ effect transactions in securities with or for, or
2191 induce or attempt to induce the purchase or sale of any security
2192 by:
2193 1. A person from Canada who is present ~~temporarily resides~~
2194 in this state and with whom the Canadian dealer had a bona fide
2195 dealer-client relationship before the person entered the United
2196 States; or
2197 2. A person from Canada who is present in ~~a resident of~~
2198 this state~~,~~ and whose transactions are in a self-directed, tax-
2199 advantaged ~~tax advantage~~ retirement plan in Canada of which the
2200 person is the holder or contributor.
2201 (b) A notice filing under this subsection must consist of
2202 documents the commission by rule requires to be filed, together
2203 with a consent to service of process and a nonrefundable filing
2204 fee of $200. The commission may establish by rule procedures for
2205 the deposit of fees and the filing of documents to be made by
2206 electronic means, if such procedures provide the office with the
2207 information and data required by this section ~~An associated~~
2208 ~~person who represents a Canadian dealer registered under this~~
2209 ~~section may, provided the agent is registered in accordance with~~
2210 ~~this section, effect transactions in securities in this state as~~
2211 ~~permitted for a dealer, under subsection (a)~~.

2212 (c) A Canadian dealer may make a notice filing ~~register~~
2213 under this subsection if the ~~section provided that such~~ dealer
2214 provides to the office:
2215 1. A notice filing ~~Files an application~~ in the form the
2216 commission requires by rule ~~required by the jurisdiction in~~
2217 ~~which the dealer has a head office~~.
2218 2. ~~Files~~ A consent to service of process.
2219 3. Evidence that the Canadian dealer is registered as a
2220 dealer ~~in good standing~~ in the jurisdiction in which the
2221 dealer's main office is located ~~from which it is effecting~~
2222 ~~transactions into this state and files evidence of such~~
2223 ~~registration with the office~~.
2224 4. Evidence that the Canadian dealer is a member of a
2225 self-regulatory organization or stock exchange in Canada.
2226 (d) The office may issue a permit to evidence the
2227 effectiveness of a notice filing for a Canadian dealer.
2228 (e) A notice filing is effective upon receipt by the
2229 office. A notice filing expires on December 31 of the year in
2230 which the filing becomes effective unless the Canadian dealer
2231 has renewed the filing on or before that date. A Canadian dealer
2232 may annually renew a notice filing by furnishing to the office
2233 such information as the office requires together with a renewal
2234 fee of $200 and the payment of any amount due and owing the
2235 office pursuant to any agreement with the office. Any Canadian
2236 dealer who has not renewed a notice filing by the time a current
2237 notice filing expires may request reinstatement of such notice
2238 filing by filing with the office, on or before January 31 of the
2239 year following the year the notice filing expires, such

2240 information as the commission requires by rule, together with
2241 the payment of $200 and a late fee of $200. A reinstatement of a
2242 notice filing granted by the office during the month of January
2243 is effective retroactively to January 1 of that year.
2244 (f) ~~(d)~~ An associated person who represents a Canadian
2245 dealer who has made a notice filing ~~registered~~ under this
2246 subsection is exempt from the registration requirements of this
2247 section and may effect ~~section in effecting~~ transactions in
2248 securities in this state as permitted for a dealer under
2249 paragraph (a) if such person ~~may register under this section~~
2250 ~~provided that such person:~~
2251 ~~1. Files an application in the form required by the~~
2252 ~~jurisdiction in which the dealer has its head office.~~
2253 ~~2.~~ is registered ~~in good standing~~ in the jurisdiction from
2254 which he or she is effecting transactions into this state ~~and~~
2255 ~~files evidence of such registration with the office~~.
2256 ~~(c) If the office finds that the applicant is of good~~
2257 ~~repute and character and has complied with the provisions of~~
2258 ~~this chapter, the office shall register the applicant.~~
2259 (g) ~~(f)~~ A Canadian dealer who has made a notice filing
2260 ~~registered~~ under this subsection ~~section~~ shall:
2261 1. Maintain its provincial or territorial registration and
2262 its membership in a self-regulatory organization or stock
2263 exchange in good standing.
2264 2. Provide the office upon request with its books and
2265 records relating to its business in this state as a dealer.
2266 3. Provide the office upon request notice of each civil,
2267 criminal, or administrative action initiated against the dealer.

2268 4. Disclose to its clients in this state that the dealer
2269 and its associated persons ~~agents~~ are not subject to the full
2270 regulatory requirements under this chapter.
2271 5. Correct any inaccurate information within 30 days
2272 after~~, if~~ the information contained in the notice filing
2273 ~~application form~~ becomes inaccurate for any reason ~~before or~~
2274 ~~after the dealer becomes registered~~.
2275 (h) ~~(g)~~ An associated person representing ~~of~~ a Canadian
2276 dealer who has made a notice filing ~~registered~~ under this
2277 subsection ~~section~~ shall:
2278 1. Maintain provincial or territorial registration in good
2279 standing.
2280 2. Provide the office upon request with notice of each
2281 civil, criminal, or administrative action initiated against such
2282 person.
2283 ~~3. Through the dealer, correct any inaccurate information~~
2284 ~~within 30 days, if the information contained in the application~~
2285 ~~form becomes inaccurate for any reason before or after the~~
2286 ~~associated person becomes registered.~~
2287 (i) A notice filing may be terminated by filing notice of
2288 such termination with the office. Unless another date is
2289 specified by the Canadian dealer, such notice is effective upon
2290 receipt of the notice by the office.
2291 (j) All fees collected under this subsection become the
2292 revenue of the state, except those assessments provided for
2293 under s. 517.131(1), until the Securities Guaranty Fund has
2294 satisfied the statutory limits. Such fees are not returnable if
2295 a notice filing is withdrawn.

2296 ~~(h) Renewal applications for Canadian dealers and~~
2297 ~~associated persons under this section must be filed before~~
2298 ~~December 31 each year. Every applicant for registration or~~
2299 ~~renewal registration under this section shall pay the fee for~~
2300 ~~dealers and associated persons under this chapter.~~
2301 Section 37. Paragraphs (b) and (e) of subsection (3) of
2302 section 517.131, Florida Statutes, are amended, and subsection
2303 (5) is added to that section, to read:
2304 517.131 Securities Guaranty Fund.--
2305 (3) Any person is eligible to seek recovery from the
2306 Securities Guaranty Fund if:
2307 (b) Such person has made all reasonable searches and
2308 inquiries to ascertain whether the judgment debtor possesses
2309 real or personal property or other assets subject to being sold
2310 or applied in satisfaction of the judgment, and by her or his
2311 search the person has discovered no property or assets; or she
2312 or he has discovered property and assets and has taken all
2313 necessary action and proceedings for the application thereof to
2314 the judgment, but the amount thereby realized was insufficient
2315 to satisfy the judgment. To verify compliance with such
2316 condition, the office may require such person to have a writ of
2317 execution be issued upon such judgment, ~~and~~ may ~~further~~ require
2318 a showing that no personal or real property of the judgment
2319 debtor liable to be levied upon in complete satisfaction of the
2320 judgment can be found, or may require an affidavit from the
2321 claimant setting forth the reasonable searches and inquiries
2322 undertaken and the result of those searches and inquiries.
2323 (e) The office waives compliance with the requirements of

2324 paragraph (a) or paragraph (b). The office may waive such
2325 compliance if the dealer, investment adviser, or associated
2326 person which is the subject of the claim filed with the office
2327 is the subject of any proceeding in which a receiver has been
2328 appointed by a court of competent jurisdiction. If the office
2329 waives such compliance, the office may, upon petition by the
2330 debtor or the court-appointed trustee, examiner, or receiver,
2331 distribute funds from the Securities Guaranty Fund up to the
2332 amount allowed under s. 517.141. Any waiver granted pursuant to
2333 this section shall be considered a judgment for purposes of
2334 complying with the requirements of this section and of s.
2335 517.141.
2336 (5) The commission may adopt rules pursuant to ss.
2337 120.536(1) and 120.54 specifying the procedures for complying
2338 with subsections (2), (3), and (4), including rules for the form
2339 of submission and guidelines for the sufficiency and content of
2340 submissions of notices and claims.
2341 Section 38. Subsections (2) and (5) of section 517.141,
2342 Florida Statutes, are amended, and subsection (11) is added to
2343 that section, to read:
2344 517.141 Payment from the fund.--
2345 (2) Regardless of the number of claims or claimants
2346 involved, payments for claims shall be limited in the aggregate
2347 to $100,000 against any one dealer, investment adviser, or
2348 associated person. If the total claims exceed the aggregate
2349 limit of $100,000, the office shall prorate the payment based
2350 upon the ratio that the person's claim bears to the total claims
2351 filed.

2352 (5) If the final judgment that ~~which~~ gave rise to the
2353 claim is overturned in any appeal or in any collateral
2354 proceeding, the claimant shall reimburse the fund all amounts
2355 paid from the fund to the claimant on the claim. If the claimant
2356 satisfies the judgment specified in s. 517.131(3)(a), the
2357 claimant shall reimburse the fund all amounts paid from the fund
2358 to the claimant on the claim. Such reimbursement shall be paid
2359 to the office within 60 days after the final resolution of the
2360 appellate or collateral proceedings or the satisfaction of
2361 judgment, with the 60-day period commencing on the date the
2362 final order or decision is entered in such proceedings.
2363 (11) The commission may adopt rules pursuant to ss.
2364 120.536(1) and 120.54 specifying procedures for complying with
2365 this section, including rules for the form of submission and
2366 guidelines for the sufficiency and content of submissions of
2367 notices and claims.
2368 Section 39. Subsection (1) of section 517.161, Florida
2369 Statutes, is amended to read:
2370 517.161 Revocation, denial, or suspension of registration
2371 of dealer, investment adviser, associated person, or branch
2372 office.--
2373 (1) Registration under s. 517.12 may be denied or any
2374 registration granted may be revoked, restricted, or suspended by
2375 the office if the office determines that such applicant or
2376 registrant:
2377 (a) Has violated any provision of this chapter or any rule
2378 or order made under this chapter;
2379 (b) Has made a material false statement in the application

2380 for registration;
2381 (c) Has been guilty of a fraudulent act in connection with
2382 rendering investment advice or in connection with any sale of
2383 securities, has been or is engaged or is about to engage in
2384 making fictitious or pretended sales or purchases of any such
2385 securities or in any practice involving the rendering of
2386 investment advice or the sale of securities which is fraudulent
2387 or in violation of the law;
2388 (d) Has made a misrepresentation or false statement to, or
2389 concealed any essential or material fact from, any person in the
2390 rendering of investment advice or the sale of a security to such
2391 person;
2392 (e) Has failed to account to persons interested for all
2393 money and property received;
2394 (f) Has not delivered, after a reasonable time, to persons
2395 entitled thereto securities held or agreed to be delivered by
2396 the dealer, broker, or investment adviser, as and when paid for,
2397 and due to be delivered;
2398 (g) Is rendering investment advice or selling or offering
2399 for sale securities through any associated person not registered
2400 in compliance with the provisions of this chapter;
2401 (h) Has demonstrated unworthiness to transact the business
2402 of dealer, investment adviser, or associated person;
2403 (i) Has exercised management or policy control over or
2404 owned 10 percent or more of the securities of any dealer or
2405 investment adviser that has been declared bankrupt, or had a
2406 trustee appointed under the Securities Investor Protection Act;
2407 or is, in the case of a dealer or investment adviser, insolvent;

2408 (j) Has been convicted of, or has entered a plea of guilty
2409 or nolo contendere to, a crime against the laws of this state or
2410 any other state or of the United States or of any other country
2411 or government which relates to registration as a dealer,
2412 investment adviser, issuer of securities, associated person, or
2413 branch office; which relates to the application for such
2414 registration; or which involves moral turpitude or fraudulent or
2415 dishonest dealing;
2416 (k) Has had a final judgment entered against her or him in
2417 a civil action upon grounds of fraud, embezzlement,
2418 misrepresentation, or deceit;
2419 (l) Is of bad business repute; ~~or~~
2420 (m) Has been the subject of any decision, finding,
2421 injunction, suspension, prohibition, revocation, denial,
2422 judgment, or administrative order by any court of competent
2423 jurisdiction, administrative law judge, or by any state or
2424 federal agency, national securities, commodities, or option
2425 exchange, or national securities, commodities, or option
2426 association, involving a violation of any federal or state
2427 securities or commodities law or any rule or regulation
2428 promulgated thereunder, or any rule or regulation of any
2429 national securities, commodities, or options exchange or
2430 national securities, commodities, or options association, or has
2431 been the subject of any injunction or adverse administrative
2432 order by a state or federal agency regulating banking,
2433 insurance, finance or small loan companies, real estate,
2434 mortgage brokers <u>or lenders</u>, <u>money transmitters,</u> or other
2435 related or similar industries. For purposes of this subsection,

2436 the office may not deny registration to any applicant who has
2437 been continuously registered with the office for 5 years from
2438 the entry of such decision, finding, injunction, suspension,
2439 prohibition, revocation, denial, judgment, or administrative
2440 order provided such decision, finding, injunction, suspension,
2441 prohibition, revocation, denial, judgment, or administrative
2442 order has been timely reported to the office pursuant to the
2443 commission's rules; or.
2444 (n) Made payment to the office for a registration or
2445 notice filing with a check or electronic transmission of funds
2446 that is dishonored by the applicant's, registrant's, or notice
2447 filer's financial institution.
2448 Section 40. Section 520.02, Florida Statutes, is amended
2449 to read:
2450 520.02 Definitions.--In this act, unless the context or
2451 subject matter otherwise requires:
2452 (1) "Branch" means any location, other than a licensee's
2453 principal place of business, at which a licensee operates or
2454 conducts business under this act or which a licensee owns or
2455 controls for the purpose of conducting business under this act.
2456 (2) "Cash price" means the price at which a seller, in the
2457 ordinary course of business, offers to sell for cash the
2458 property or service that is the subject of the transaction. At
2459 the seller's option, the term "cash price" may include the price
2460 of accessories, services related to the sale, service contracts,
2461 and taxes and fees for license, title, and registration of the
2462 motor vehicle. The term "cash price" does not include any
2463 finance charge.

2464 (3) "Commission" means the Financial Services Commission.
2465 (4) "Control person" means an individual, partnership,
2466 corporation, trust, or other organization that possesses the
2467 power, directly or indirectly, to direct the management or
2468 policies of a company, whether through ownership of securities,
2469 by contract, or otherwise. A person is presumed to control a
2470 company if, with respect to a particular company, that person:
2471 (a) Is a director, general partner, or officer exercising
2472 executive responsibility or having similar status or functions;
2473 (b) Directly or indirectly may vote 10 percent or more of
2474 a class of a voting security or sell or direct the sale of 10
2475 percent or more of a class of voting securities; or
2476 (c) In the case of a partnership, may receive upon
2477 dissolution or has contributed 10 percent or more of the
2478 capital.
2479 (5) "Down payment" means the amount, including the value
2480 of any property used as a trade-in, paid to a seller to reduce
2481 the cash price of goods or services purchased in a credit sale
2482 transaction. A deferred portion of a down payment may be treated
2483 as part of the down payment if it is payable not later than the
2484 due date of the second otherwise regularly scheduled payment and
2485 is not subject to a finance charge.
2486 (6) "Finance charge" means the cost of consumer credit as
2487 a dollar amount. The term "finance charge" includes any charge
2488 payable directly or indirectly by the buyer and imposed directly
2489 or indirectly by the seller as an incident to or a condition of
2490 the extension of credit. The term "finance charge" does not

2491 include any charge of a type payable in a comparable cash
2492 transaction.
2493 (7) "Holder" of a retail installment contract means the
2494 retail seller of a motor vehicle retail installment contract or
2495 an assignee of such contract.
2496 (8) "Mobile home" means a structure, transportable in one
2497 or more sections, which is 8 body feet or more in width and is
2498 32 body feet or more in length, designed to be used as a
2499 dwelling with or without a permanent foundation when connected
2500 to the required utilities, and includes the plumbing, heating,
2501 air-conditioning, and electrical systems contained therein.
2502 (9) "Motor vehicle" means any device or vehicle, including
2503 automobiles, motorcycles, motor trucks, trailers, mobile homes,
2504 and all other vehicles operated over the public highways and
2505 streets of this state and propelled by power other than muscular
2506 power, but excluding traction engines, road rollers, implements
2507 of husbandry and other agricultural equipment, and vehicles
2508 which run only upon a track.
2509 (10) ~~(15)~~ "Motor vehicle retail installment seller" or
2510 "seller" means a person engaged in the business of selling motor
2511 vehicles to retail buyers in retail installment transactions.
2512 (11) ~~(4)~~ "Office" means the Office of Financial Regulation
2513 of the commission.
2514 (12) ~~(10)~~ "Official fees" means fees and charges prescribed
2515 by law which actually are or will be paid to public officials
2516 for determining the existence of, or for perfecting, releasing,
2517 or satisfying, any security related to the credit transaction,
2518 or the premium payable for any insurance in lieu of perfecting

2519 any security interest otherwise required by the creditor in
2520 connection with the transaction, if the premium does not exceed
2521 the fees and charges which would otherwise be payable to public
2522 officials.
2523 (13) ~~(11)~~ "Person" means an individual, partnership,
2524 corporation, association, and any other group however organized.
2525 (14) ~~(12)~~ "Principal place of business" means the physical
2526 location designated on the licensee's application for licensure,
2527 unless otherwise designated as required by this chapter.
2528 (15) ~~(13)~~ "Retail buyer" or "buyer" means a person who buys
2529 a motor vehicle from a seller not principally for the purpose of
2530 resale, and who executes a retail installment contract in
2531 connection therewith or a person who succeeds to the rights and
2532 obligations of such person.
2533 (16) ~~(14)~~ "Retail installment contract" or "contract" means
2534 an agreement, entered into in this state, pursuant to which the
2535 title to, or a lien upon the motor vehicle, which is the subject
2536 matter of a retail installment transaction, is retained or taken
2537 by a seller from a retail buyer as security, in whole or in
2538 part, for the buyer's obligation. The term includes a
2539 conditional sales contract and a contract for the bailment or
2540 leasing of a motor vehicle by which the bailee or lessee
2541 contracts to pay as compensation for its use a sum substantially
2542 equivalent to or in excess of its value and by which it is
2543 agreed that the bailee or lessee is bound to become, or for no
2544 further or a merely nominal consideration, has the option of
2545 becoming, the owner of the motor vehicle upon full compliance
2546 with the provisions of the contract.

2547 (17) ~~(16)~~ "Retail installment transaction" means any
2548 transaction evidenced by a retail installment contract entered
2549 into between a retail buyer and a seller wherein the retail
2550 buyer buys a motor vehicle from the seller at a deferred payment
2551 price payable in one or more deferred installments.
2552 (18) ~~(17)~~ "Sales finance company" means a person engaged in
2553 the business of purchasing retail installment contracts from one
2554 or more sellers. The term includes, but is not limited to, a
2555 bank or trust company, if so engaged. The term does not include
2556 the pledge of an aggregate number of such contracts to secure a
2557 bona fide loan thereon.
2558 (19) ~~(18)~~ Words in the singular include the plural and vice
2559 versa.
2560 Section 41. Subsections (2) through (5) of section 520.03,
2561 Florida Statutes, are amended to read:
2562 520.03 Licenses.--
2563 (2) An application for a license under this part must be
2564 submitted to the office in such form as the commission may
2565 prescribe by rule. The commission may require each applicant to
2566 provide any information reasonably necessary to determine the
2567 applicant's eligibility for licensure. The applicant shall also
2568 provide information that the office requires concerning any
2569 officer, director, control person, member, partner, or joint
2570 venturer of the applicant or any person having the same or
2571 substantially similar status or performing substantially similar
2572 functions or any individual who is the ultimate equitable owner
2573 of a 10-percent or greater interest in the applicant. The office
2574 may require information concerning any such applicant or person,

2575 including, but not limited to, his or her full name and any
2576 other names by which he or she may have been known, age, social
2577 security number, residential history, qualifications,
2578 educational and business history, and disciplinary and criminal
2579 history. If the office determines that an application should be
2580 granted, it shall issue the license for a period not to exceed 2
2581 years. A nonrefundable application fee of $175 shall accompany
2582 an initial application for the principal place of business and
2583 each application for a branch location of a retail installment
2584 seller who is required to be licensed under this chapter. An
2585 application is considered received for purposes of s. 120.60
2586 upon receipt of a completed application form as prescribed by
2587 commission rule, a nonrefundable application fee of $175, and
2588 any other fee prescribed by law.
2589 (3) The nonrefundable renewal fee for a motor vehicle
2590 retail installment seller license shall be $175. The commission
2591 shall establish by rule biennial licensure periods and
2592 procedures for renewal of licenses. A license that is not
2593 renewed by the end of the biennium established by the commission
2594 shall revert from active to inactive status. An inactive license
2595 may be reactivated within 6 months after becoming inactive upon
2596 filing a completed reactivation form, payment of the
2597 nonrefundable renewal fee, and payment of a reactivation fee
2598 equal to the nonrefundable renewal fee. A license that is not
2599 reactivated within 6 months after becoming inactive
2600 automatically expires.
2601 (4) ~~Each license shall specify the location for which it~~
2602 ~~is issued and must be conspicuously displayed at that location.~~

2603 ~~Prior to relocating a principal place of business or any branch~~
2604 ~~location, the licensee must provide to the office notice of the~~
2605 ~~relocation in a form prescribed by commission rule.~~ A licensee
2606 may not transact business as a motor vehicle retail installment
2607 seller except under the name by which it is licensed. Licenses
2608 issued under this part are not transferable or assignable.
2609 (5) The office may deny an initial application for a
2610 license under this part if the applicant or any officer,
2611 director, control person, member, partner, or joint venturer
2612 ~~person with power to direct the management or policies~~ of the
2613 applicant is the subject of a pending criminal prosecution or
2614 governmental enforcement action, in any jurisdiction, until
2615 conclusion of such criminal prosecution or enforcement action.
2616 Section 42. Subsections (10) through (18) of section
2617 520.31, Florida Statutes, are renumbered as subsections (11)
2618 through (19), respectively, subsection (4) of that section is
2619 renumbered as subsection (10), and a new subsection (4) is added
2620 to that section, to read:
2621 520.31 Definitions.--Unless otherwise clearly indicated by
2622 the context, the following words when used in this act, for the
2623 purposes of this act, shall have the meanings respectively
2624 ascribed to them in this section:
2625 (4) "Control person" means an individual, partnership,
2626 corporation, trust, or other organization that possesses the
2627 power, directly or indirectly, to direct the management or
2628 policies of a company, whether through ownership of securities,
2629 by contract, or otherwise. A person is presumed to control a
2630 company if, with respect to a particular company, that person:

2631 (a) Is a director, general partner, or officer exercising
2632 executive responsibility or having similar status or functions;
2633 (b) Directly or indirectly has the right to vote 10
2634 percent or more of a class of a voting security or has the power
2635 to sell or direct the sale of 10 percent or more of a class of
2636 voting securities; or
2637 (c) In the case of a partnership, has the right to receive
2638 upon dissolution or has contributed 10 percent or more of the
2639 capital.
2640 Section 43. Subsections (2) through (5) of section 520.32,
2641 Florida Statutes, are amended to read:
2642 520.32 Licenses.--
2643 (2) An application for a license under this part must be
2644 submitted to the office in such form as the commission may
2645 prescribe by rule. The commission may require each applicant to
2646 provide any information reasonably necessary to determine the
2647 applicant's eligibility for licensure. The applicant shall also
2648 provide information that the office requires concerning any
2649 officer, director, control person, member, partner, or joint
2650 venturer of the applicant or any person having the same or
2651 substantially similar status or performing substantially similar
2652 functions or any individual who is the ultimate equitable owner
2653 of a 10-percent or greater interest in the applicant. The office
2654 may require information concerning any such applicant or person,
2655 including his or her full name and any other names by which he
2656 or she may have been known, age, social security number,
2657 residential history, qualifications, educational and business
2658 history, and disciplinary and criminal history. If the office

2659 determines that an application should be granted, it shall issue
2660 the license for a period not to exceed 2 years. A nonrefundable
2661 application fee of $175 shall accompany an initial application
2662 for the principal place of business and each application for a
2663 branch location of a retail installment seller. An application
2664 is considered received for purposes of s. 120.60 upon receipt of
2665 a completed application form as prescribed by commission rule, a
2666 nonrefundable application fee of $175, and any other fee
2667 prescribed by law.
2668 (3) The nonrefundable renewal fee for a retail seller
2669 license shall be $175. Biennial licensure periods and procedures
2670 for renewal of licenses may also be established by the
2671 commission by rule. A license that is not renewed at the end of
2672 the biennium established by the commission shall revert from
2673 active to inactive status. An inactive license may be
2674 reactivated within 6 months after becoming inactive upon filing
2675 a completed reactivation form, payment of the nonrefundable
2676 renewal fee, and payment of a reactivation fee equal to the
2677 nonrefundable renewal fee. A license that is not reactivated
2678 within 6 months after becoming inactive automatically expires.
2679 (4) ~~Each license must specify the location for which it is~~
2680 ~~issued and must be conspicuously displayed at that location. If~~
2681 ~~a licensee's principal place of business or branch location~~
2682 ~~changes, the licensee shall notify the office and the office~~
2683 ~~shall endorse the change of location without charge.~~ A licensee
2684 may not transact business as a retail installment seller except
2685 under the name by which it is licensed. A license issued under
2686 this part is not transferable or assignable.

2687 (5) The office may deny an initial application for a
2688 license under this part if the applicant or any officer,
2689 director, control person, member, partner, or joint venturer
2690 ~~person with power to direct the management or policies~~ of the
2691 applicant is the subject of a pending criminal prosecution or
2692 governmental enforcement action, in any jurisdiction, until
2693 conclusion of such criminal prosecution or enforcement action.
2694 Section 44. Subsections (2) through (5) of section 520.52,
2695 Florida Statutes, are amended to read:
2696 520.52 Licensees.--
2697 (2) An application for a license under this part must be
2698 submitted to the office in such form as the commission may
2699 prescribe by rule. The commission may require each applicant to
2700 provide any information reasonably necessary to determine the
2701 applicant's eligibility for licensure. The applicant shall also
2702 provide information that the office requires concerning any
2703 officer, director, control person, member, partner, or joint
2704 venturer of the applicant or any person having the same or
2705 substantially similar status or performing substantially similar
2706 functions or any individual who is the ultimate equitable owner
2707 of a 10-percent or greater interest in the applicant. The office
2708 may require information concerning any such applicant or person,
2709 including his or her full name and any other names by which he
2710 or she may have been known, age, social security number,
2711 residential history, qualifications, educational and business
2712 history, and disciplinary and criminal history. If the office
2713 determines that an application should be granted, it shall issue
2714 the license for a period not to exceed 2 years. A nonrefundable

2715 application fee of $175 shall accompany an initial application
2716 for the principal place of business and each branch location of
2717 a sales finance company. An application is considered received
2718 for purposes of s. 120.60 upon receipt of a completed
2719 application form as prescribed by commission rule, a
2720 nonrefundable application fee of $175, and any other fee
2721 prescribed by law.
2722 (3) The nonrefundable renewal fee for a sales finance
2723 company license shall be $175. Biennial licensure periods and
2724 procedures for renewal of licenses may also be established by
2725 the commission by rule. A license that is not renewed at the end
2726 of the biennium established by the commission shall revert from
2727 active to inactive status. An inactive license may be
2728 reactivated within 6 months after becoming inactive upon filing
2729 a completed reactivation form, payment of the nonrefundable
2730 renewal fee, and payment of a reactivation fee equal to the
2731 nonrefundable renewal fee. A license that is not reactivated
2732 within 6 months after becoming inactive automatically expires.
2733 (4) ~~Each license must specify the location for which it is~~
2734 ~~issued and must be conspicuously displayed at that location. If~~
2735 ~~a licensee's principal place of business or branch location~~
2736 ~~changes, the licensee shall notify the office and the office~~
2737 ~~shall endorse the change of location without charge.~~ A licensee
2738 may not transact business as a sales finance company except
2739 under the name by which it is licensed. A license issued under
2740 this part is not transferable or assignable.
2741 (5) The office may deny an initial application for a
2742 license under this part if the applicant or any officer,

2743 director, control person, member, partner, or joint venturer
2744 ~~person with power to direct the management or policies~~ of the
2745 applicant is the subject of a pending criminal prosecution or
2746 governmental enforcement action, in any jurisdiction, until
2747 conclusion of such criminal prosecution or enforcement action.
2748 Section 45. Subsections (5), (6), (7), (15), (16), and
2749 (22) of section 520.61, Florida Statutes, are renumbered as
2750 subsections (7), (5), (16), (22), (15), and (23), respectively,
2751 and a new subsection (6) is added to that section to read:
2752 520.61 Definitions.--As used in this act:
2753 (6) "Control person" means an individual, partnership,
2754 corporation, trust, or other organization that possesses the
2755 power, directly or indirectly, to direct the management or
2756 policies of a company, whether through ownership of securities,
2757 by contract, or otherwise. A person is presumed to control a
2758 company if, with respect to a particular company, that person:
2759 (a) Is a director, general partner, or officer exercising
2760 executive responsibility or having similar status or functions;
2761 (b) Directly or indirectly may vote 10 percent or more of
2762 a class of a voting security or sell or direct the sale of 10
2763 percent or more of a class of voting securities; or
2764 (c) In the case of a partnership, may receive upon
2765 dissolution or has contributed 10 percent or more of the
2766 capital.
2767 Section 46. Subsections (2) through (5) of section 520.63,
2768 Florida Statutes, are amended to read:
2769 520.63 Licensees.--
2770 (2) An application for a license under this part must be

2771 submitted to the office in such form as the commission may
2772 prescribe by rule. The commission may require each applicant to
2773 provide any information reasonably necessary to determine the
2774 applicant's eligibility for licensure. The applicant shall also
2775 provide information that the office requires concerning any
2776 officer, director, control person, member, partner, or joint
2777 venturer of the applicant or any person having the same or
2778 substantially similar status or performing substantially similar
2779 functions or any individual who is the ultimate equitable owner
2780 of a 10-percent or greater interest in the applicant. The office
2781 may require information concerning any such applicant or person,
2782 including, but not limited to, his or her full name and any
2783 other names by which he or she may have been known, age, social
2784 security number, residential history, qualifications,
2785 educational and business history, and disciplinary and criminal
2786 history. If the office determines that an application should be
2787 granted, it shall issue the license for a period not to exceed 2
2788 years. A nonrefundable application fee of $175 shall accompany
2789 an initial application for the principal place of business and
2790 each application for a branch location of a home improvement
2791 finance seller. An application is considered received for
2792 purposes of s. 120.60 upon receipt of a completed application
2793 form as prescribed by commission rule, a nonrefundable
2794 application fee of $175, and any other fee prescribed by law.
2795 (3) The nonrefundable renewal fee for a home improvement
2796 finance license shall be $175. Biennial licensure periods and
2797 procedures for renewal of licenses may also be established by
2798 the commission by rule. A license that is not renewed at the end

2799 of the biennium established by the commission shall
2800 automatically revert from active to inactive status. An inactive
2801 license may be reactivated within 6 months after becoming
2802 inactive upon filing a completed reactivation form, payment of
2803 the nonrefundable renewal fee, and payment of a reactivation fee
2804 equal to the nonrefundable renewal fee. A license that is not
2805 reactivated within 6 months after becoming inactive
2806 automatically expires.
2807 (4) ~~Each license must specify the location for which it is~~
2808 ~~issued and must be conspicuously displayed at that location. If~~
2809 ~~a home improvement finance seller's principal place of business~~
2810 ~~or any branch location changes, the licensee shall notify the~~
2811 ~~office and the office shall endorse the change of location~~
2812 ~~without charge.~~ A licensee may not transact business as a home
2813 improvement finance seller except under the name by which it is
2814 licensed. A license issued under this part is not transferable
2815 or assignable.
2816 (5) The office may deny an initial application for a
2817 license under this part if the applicant or any officer,
2818 director, control person, member, partner, or joint venturer
2819 ~~person with power to direct the management or policies~~ of the
2820 applicant is the subject of a pending criminal prosecution or
2821 governmental enforcement action, in any jurisdiction, until
2822 conclusion of such criminal prosecution or enforcement action.
2823 Section 47. Subsection (5) of section 520.994, Florida
2824 Statutes, is amended to read:
2825 520.994 Powers of office.--
2826 (5) The office shall administer and enforce this chapter.

2827 The commission has authority to adopt rules pursuant to ss.
2828 120.536(1) and 120.54 to implement the provisions of this
2829 chapter. The commission may adopt rules requiring ~~to allow~~
2830 electronic submission of any form, document, or fee required by
2831 this chapter if such rules reasonably accommodate technological
2832 or financial hardship. The commission may prescribe by rule
2833 requirements and procedures for obtaining an exemption due to a
2834 technological or financial hardship.
2835 Section 48. Subsections (1) and (4) of section 520.995,
2836 Florida Statutes, are amended to read:
2837 520.995 Grounds for disciplinary action.--
2838 (1) The following acts are violations of this chapter and
2839 constitute grounds for the disciplinary actions specified in
2840 subsection (2):
2841 (a) Failure to comply with any provision of this chapter,
2842 any rule or order adopted pursuant to this chapter, or any
2843 written agreement entered into with the office.~~;~~
2844 (b) Fraud, misrepresentation, deceit, or gross negligence
2845 in any home improvement finance transaction or retail
2846 installment transaction, regardless of reliance by or damage to
2847 the buyer or owner.~~;~~
2848 (c) Fraudulent misrepresentation, circumvention, or
2849 concealment of any matter required to be stated or furnished to
2850 a retail buyer or owner pursuant to this chapter, regardless of
2851 reliance by or damage to the buyer or owner.~~;~~
2852 (d) Willful imposition of illegal or excessive charges in
2853 any retail installment transaction or home improvement finance
2854 transaction.~~;~~

2855 (e) False, deceptive, or misleading advertising by a
2856 seller or home improvement finance seller.~~;~~
2857 (f) Failure to maintain, preserve, and keep available for
2858 examination, all books, accounts, or other documents required by
2859 this chapter, by any rule or order adopted pursuant to this
2860 chapter, or by any agreement entered into with the office.~~;~~
2861 (g) Refusal to permit inspection of books and records in
2862 an investigation or examination by the office or refusal to
2863 comply with a subpoena issued by the office.~~;~~
2864 (h) Criminal conduct in the course of a person's business
2865 as a seller, as a home improvement finance seller, or as a sales
2866 finance company.~~; or~~
2867 (i) Failure to timely pay any fee, charge, or fine imposed
2868 or assessed pursuant to this chapter or any rule adopted under
2869 this chapter.
2870 (j) Using the name or logo of a financial institution, as
2871 defined in s. 655.005(1), or its affiliates or subsidiaries when
2872 marketing or soliciting existing or prospective customers if
2873 such marketing materials are used without the written consent of
2874 the financial institution and in a manner that would lead a
2875 reasonable person to believe that the material or solicitation
2876 originated from, was endorsed by, or is related to or the
2877 responsibility of the financial institution or its affiliates or
2878 subsidiaries.
2879 (k) Payment to the office for a license or permit with a
2880 check or electronic transmission of funds that is dishonored by
2881 the applicant's or licensee's financial institution.
2882 (4) It is sufficient cause for the office to take any of

2883 the actions specified in subsection (2) as to any partnership,
2884 corporation, or association, if the office finds grounds for
2885 such action as to any member of the partnership, as to any
2886 officer or director of the corporation or association, or as to
2887 any control person, partner, or joint venturer ~~person with power~~
2888 ~~to direct the management or policies~~ of the partnership,
2889 corporation, or association.
2890 Section 49. Subsection (4) of section 520.997, Florida
2891 Statutes, is amended to read:
2892 520.997 Books, accounts, and records.--
2893 (4) The commission may prescribe by rule the minimum
2894 information to be shown in the books, accounts, documents, and
2895 records of licensees so that such records will enable the office
2896 to determine compliance with ~~the provisions of~~ this chapter. In
2897 addition, the commission may prescribe by rule requirements for
2898 the destruction of books, accounts, records, and documents
2899 retained by the licensee after completion of the time period
2900 specified in subsection (3).
2901 Section 50. Section 520.999, Florida Statutes, is created
2902 to read:
2903 520.999 Requirements of licensees.--
2904 (1) Each licensee under this chapter shall report, on a
2905 form prescribed by rule of the commission, any change in the
2906 information contained in any initial application form or any
2907 amendment to such application not later than 30 days after the
2908 change is effective.
2909 (2) Each licensee under this chapter shall report any
2910 changes in the partners, officers, members, joint venturers,

2911 directors, or control persons of any licensee or changes in the
2912 form of business organization by written amendment in such form
2913 and at such time as the commission specifies by rule.
2914 (a) In any case in which a person or a group of persons,
2915 directly or indirectly or acting by or through one or more
2916 persons, proposes to purchase or acquire a controlling interest
2917 in a licensee, such person or group must submit an initial
2918 application for licensure before such purchase or acquisition at
2919 such time and in such form as the commission prescribes by rule.
2920 (b) As used in subsection, the term "controlling interest"
2921 means possession of the power to direct or cause the direction
2922 of the management or policies of a company whether through
2923 ownership of securities, by contract, or otherwise. Any person
2924 who directly or indirectly has the right to vote 25 percent or
2925 more of the voting securities of a company or is entitled to 25
2926 percent or more of its profits is presumed to possess a
2927 controlling interest.
2928 (c) Any addition of a partner, officer, member, joint
2929 venturer, director, or control person of the applicant who does
2930 not have a controlling interest and who has not previously
2931 complied with the provisions of ss. 520.03(2), 520.32(2),
2932 520.52(2), and 520.63(2) shall be subject to such provisions
2933 unless required to file an initial application in accordance
2934 with paragraph (a). If the office determines that the licensee
2935 does not continue to meet licensure requirements, the office may
2936 bring administrative action in accordance with s. 520.995 to
2937 enforce the provisions of this chapter.
2938 (d) The commission shall adopt rules pursuant to ss.

2939 120.536(1) and 120.54 providing for the waiver of the
2940 application required by this subsection if the person or group
2941 of persons proposing to purchase or acquire a controlling
2942 interest in a licensee has previously complied with the
2943 provisions of ss. 520.03(2), 520.32(2), 520.52(2), and 520.63(2)
2944 with the same legal entity or is currently licensed with the
2945 office under this chapter.
2946 Section 51. Subsection (5) of section 537.009, Florida
2947 Statutes, is amended to read:
2948 537.009 Recordkeeping; reporting; safekeeping of
2949 property.--
2950 (5) The commission may prescribe by rule the books,
2951 accounts, documents, and records, and the minimum information to
2952 be shown in the books, accounts, documents, and records, of
2953 licensees so that such records will enable the office to
2954 determine compliance with the provisions of this act. In
2955 addition, the commission may prescribe by rule requirements for
2956 the destruction of books, accounts, records, and documents
2957 retained by the licensee after completion of the time period
2958 specified in subsection (3).
2959 Section 52. Paragraph (e) of subsection (2) of section
2960 559.9232, Florida Statutes, is amended to read:
2961 559.9232 Definitions; exclusion of rental-purchase
2962 agreements from certain regulations.--
2963 (2) A rental-purchase agreement that complies with this
2964 act shall not be construed to be, nor be governed by, any of the
2965 following:
2966 (e) A lease or agreement which constitutes a "retail

2967 installment contract" or "retail installment transaction" as
2968 those terms are defined in s. 520.31~~(13) and (14)~~; or
2969 Section 53. Subsection (3) is added to section 560.105,
2970 Florida Statutes, to read:
2971 560.105 Supervisory powers; rulemaking.--
2972 (3) The commission may adopt rules pursuant to ss.
2973 120.536(1) and 120.54 requiring electronic submission of any
2974 forms, documents, or fees required by this code if such rules
2975 reasonably accommodate technological or financial hardship. The
2976 commission may prescribe by rule requirements and procedures for
2977 obtaining an exemption due to a technological or financial
2978 hardship.
2979 Section 54. Paragraph (y) is added to subsection (1) of
2980 section 560.114, Florida Statutes, to read:
2981 560.114 Disciplinary actions.--
2982 (1) The following actions by a money transmitter or money
2983 transmitter-affiliated party are violations of the code and
2984 constitute grounds for the issuance of a cease and desist order,
2985 the issuance of a removal order, the denial of a registration
2986 application or the suspension or revocation of any registration
2987 previously issued pursuant to the code, or the taking of any
2988 other action within the authority of the office pursuant to the
2989 code:
2990 (y) Payment to the office for a license or permit with a
2991 check or electronic transmission of funds that is dishonored by
2992 the applicant's or licensee's financial institution.
2993 Section 55. Subsection (2) of section 560.121, Florida
2994 Statutes, is amended to read:

2995 560.121 Records; limited restrictions upon public
2996 access.--
2997 (2) The commission may prescribe by rule the minimum
2998 information that must be shown in the books, accounts, records,
2999 and documents of licensees for purposes of enabling the office
3000 to determine the licensee's compliance with this chapter. In
3001 addition, the commission may prescribe by rule requirements for
3002 the destruction of books, accounts, records, and documents
3003 retained by the licensee after completion of the time period
3004 specified in this subsection. Examination reports, investigatory
3005 records, applications, and related information compiled by the
3006 office, or photographic copies thereof, shall be retained by the
3007 office for a period of at least 3 years following the date that
3008 the examination or investigation ceases to be active.
3009 Application records, and related information compiled by the
3010 office, or photographic copies thereof, shall be retained by the
3011 office for a period of at least 2 years following the date that
3012 the registration ceases to be active.
3013 Section 56. Section 560.126, Florida Statutes, is amended
3014 to read:
3015 560.126 Significant events; notice required.--
3016 (1) Unless exempted by the office, every money transmitter
3017 must provide the office with a written notice within 30 ~~15~~ days
3018 after the occurrence or knowledge of, whichever period of time
3019 is greater, any of the following events:
3020 (a) ~~(1)~~ The filing of a petition under the United States
3021 Bankruptcy Code for bankruptcy or reorganization by the money
3022 transmitter.

3023 (b) ~~(2)~~ The commencement of any registration suspension or
3024 revocation proceeding, either administrative or judicial, or the
3025 denial of any original registration request or a registration
3026 renewal, by any state, the District of Columbia, any United
3027 States territory, or any foreign country, in which the money
3028 transmitter operates or plans to operate or has registered to
3029 operate.
3030 (c) ~~(3)~~ A felony indictment relating to the money
3031 transmission business involving the money transmitter or a money
3032 transmitter-affiliated party of the money transmitter.
3033 (d) ~~(4)~~ The felony conviction, guilty plea, or plea of nolo
3034 contendere, if the court adjudicates the nolo contendere pleader
3035 guilty, or the adjudication of guilt of a money transmitter or
3036 money transmitter-affiliated party.
3037 (e) ~~(5)~~ The interruption of any corporate surety bond
3038 required by the code.
3039 (f) ~~(6)~~ Any suspected criminal act, as defined by the
3040 commission by rule, perpetrated in this state against a money
3041 transmitter or authorized vendor.
3042
3043 However, a person does not incur liability ~~no liability shall be~~
3044 ~~incurred by any person~~ as a result of making a good-faith ~~good~~
3045 ~~faith~~ effort to fulfill this disclosure requirement.
3046 (2)(a) Each registrant under this code shall report, on a
3047 form prescribed by rule of the commission, any change in the
3048 information contained in any initial application form or any
3049 amendment thereto not later than 30 days after the change is
3050 effective.

3051 (b) Each registrant under the code shall report any
3052 changes in the partners, officers, members, joint venturers,
3053 directors, controlling shareholders, or responsible persons of
3054 any registrant or changes in the form of business organization
3055 by written amendment in such form and at such time as the
3056 commission specifies by rule.
3057 1. In any case in which a person or a group of persons,
3058 directly or indirectly or acting by or through one or more
3059 persons, proposes to purchase or acquire a controlling interest
3060 in a licensee, such person or group must submit an initial
3061 application for registration as a money transmitter before such
3062 purchase or acquisition at such time and in such form as the
3063 commission prescribes by rule.
3064 2. As used in this subsection, the term "controlling
3065 interest" means possession of the power to direct or cause the
3066 direction of the management or policies of a company whether
3067 through ownership of securities, by contract, or otherwise. Any
3068 person who directly or indirectly has the right to vote 25
3069 percent or more of the voting securities of a company or is
3070 entitled to 25 percent or more of its profits is presumed to
3071 possess a controlling interest.
3072 3. Any addition of a partner, officer, member, joint
3073 venturer, director, controlling shareholder, or responsible
3074 person of the applicant who does not have a controlling interest
3075 and who has not previously complied with ss. 560.205 and 560.306
3076 shall be subject to such provisions unless required to file an
3077 initial application in accordance with subparagraph 1. If the
3078 office determines that the registrant does not continue to meet

3079 registration requirements, the office may bring administrative
3080 action in accordance with s. 560.114 to enforce the provisions
3081 of this code.
3082 4. The commission shall adopt rules pursuant to ss.
3083 120.536(1) and 120.54 providing for the waiver of the
3084 application required by this subsection if the person or group
3085 of persons proposing to purchase or acquire a controlling
3086 interest in a registrant has previously complied with the
3087 provisions of ss. 560.205 and 560.306 with the same legal entity
3088 or is currently registered with the office under this code.
3089 Section 57. Section 560.127, Florida Statutes, is amended
3090 to read:
3091 560.127 Control of a money transmitter.--
3092 ~~(1)~~ A person has control over a money transmitter if:
3093 (1)~~(a)~~ The individual, partnership, corporation, trust, or
3094 other organization possesses the power, directly or indirectly,
3095 to direct the management or policies of a company, whether
3096 through ownership of securities, by contract, or otherwise. A
3097 person is presumed to control a company if, with respect to a
3098 particular company, that person:
3099 (a) Is a director, general partner, or officer exercising
3100 executive responsibility or having similar status or functions;
3101 (b) Directly or indirectly may vote 25 percent or more of
3102 a class of a voting security or sell or direct the sale of 25
3103 percent or more of a class of voting securities; or
3104 (c) In the case of a partnership, may receive upon
3105 dissolution or has contributed 25 percent or more of the
3106 capital. ~~The person directly or indirectly or acting through one~~

3107 ~~or more other persons owns, controls, or has power to vote 25~~
3108 ~~percent or more of any class of voting securities of the money~~
3109 ~~transmitter; or~~
3110 (2) ~~(b)~~ The office determines, after notice and opportunity
3111 for hearing, that the person directly or indirectly exercises a
3112 controlling influence over the activities of the money
3113 transmitter.
3114 ~~(2) In any case in which a person or a group of persons,~~
3115 ~~directly or indirectly or acting by or through one or more~~
3116 ~~persons, proposes to purchase or acquire a controlling interest~~
3117 ~~in a money transmitter, and thereby to change the control of~~
3118 ~~that money transmitter, each person or group of persons shall~~
3119 ~~provide written notice to the office.~~
3120 ~~(a) A money transmitter whose stock is traded on an~~
3121 ~~organized stock exchange shall provide the office with written~~
3122 ~~notice within 15 days after knowledge of such change in control.~~
3123 ~~(b) A money transmitter whose stock is not publicly traded~~
3124 ~~shall provide the office with not less than 30 days' prior~~
3125 ~~written notice of such proposed change in control.~~
3126 ~~(3) After a review of the written notification, the office~~
3127 ~~may require the money transmitter to provide additional~~
3128 ~~information relating to other and former addresses, and the~~
3129 ~~reputation, character, responsibility, and business~~
3130 ~~affiliations, of the proposed new owner or each of the proposed~~
3131 ~~new owners of the money transmitter.~~
3132 ~~(a) The office may deny the person or group of persons~~
3133 ~~proposing to purchase, or who have acquired control of, a money~~
3134 ~~transmitter if, after investigation, the office determines that~~

3135 ~~the person or persons are not qualified by reputation,~~
3136 ~~character, experience, or financial responsibility to control or~~
3137 ~~operate the money transmitter in a legal and proper manner and~~
3138 ~~that the interests of the other stockholders, if any, or the~~
3139 ~~interests of the public generally may be jeopardized by the~~
3140 ~~proposed change in ownership, controlling interest, or~~
3141 ~~management.~~
3142 ~~(b) The office may disapprove any person who has been~~
3143 ~~convicted of, or pled guilty or nolo contendere to, a violation~~
3144 ~~of s. 560.123, s. 655.50, chapter 896, or any similar state,~~
3145 ~~federal, or foreign law.~~
3146 Section 58. Section 560.205, Florida Statutes, is amended
3147 to read:
3148 560.205 Qualifications of applicant for registration;
3149 contents.--
3150 (1) To qualify for registration under this part, an
3151 applicant must demonstrate to the office such character and
3152 general fitness as to command the confidence of the public and
3153 warrant the belief that the registered business will be operated
3154 lawfully and fairly. The office may investigate each applicant
3155 to ascertain whether the qualifications and requirements
3156 prescribed by this part have been met. The office's
3157 investigation may include a criminal background investigation of
3158 all controlling shareholders, principals, officers, directors,
3159 members, and responsible persons of a funds transmitter and a
3160 payment instrument seller and all persons designated by a funds
3161 transmitter or payment instrument seller as an authorized
3162 vendor. Each controlling shareholder, principal, officer,

3163 director, member, and responsible person of a funds transmitter
3164 or payment instrument seller, unless the applicant is a publicly
3165 traded corporation as defined by the commission by rule, a
3166 subsidiary thereof, or a subsidiary of a bank or bank holding
3167 company organized and regulated under the laws of any state or
3168 the United States, shall file a complete set of fingerprints. A
3169 fingerprint card submitted to the office must be taken by an
3170 authorized law enforcement agency ~~officer~~. The office shall
3171 submit the ~~Such~~ fingerprints ~~must be submitted~~ to the Department
3172 of Law Enforcement for state processing and the Department of
3173 Law Enforcement shall forward the fingerprints to ~~or~~ the Federal
3174 Bureau of Investigation for state and federal processing. The
3175 cost of the fingerprint processing may be borne by the office,
3176 the employer, or the person subject to the background check. The
3177 Department of Law Enforcement shall submit an invoice to the
3178 office for the fingerprints received each month. The office
3179 shall screen the background results to determine if the
3180 applicant meets licensure requirements. The commission may waive
3181 by rule the requirement that applicants file a set of
3182 fingerprints or the requirement that such fingerprints be
3183 processed by the Department of Law Enforcement or the Federal
3184 Bureau of Investigation.
3185 (2) Each application for registration must be submitted
3186 under oath to the office on such forms as the commission
3187 prescribes by rule and must be accompanied by a nonrefundable
3188 application fee. Such fee may not exceed $500 for each payment
3189 instrument seller or funds transmitter and $50 for each
3190 authorized vendor or location operating within this state. The

3191 application must contain ~~forms shall set forth~~ such information
3192 as the commission ~~reasonably~~ requires by rule, including, but
3193 not limited to:
3194 (a) The name and address of the applicant, including any
3195 fictitious or trade names used by the applicant in the conduct
3196 of its business.
3197 (b) The history of the applicant's material litigation,
3198 criminal convictions, pleas of nolo contendere, and cases of
3199 adjudication withheld.
3200 (c) A description of the activities conducted by the
3201 applicant, the applicant's history of operations, and the
3202 business activities in which the applicant seeks to engage in
3203 this state.
3204 ~~(d) A list identifying the applicant's proposed authorized~~
3205 ~~vendors in this state, including the location or locations in~~
3206 ~~this state at which the applicant and its authorized vendors~~
3207 ~~propose to conduct registered activities.~~
3208 (d) ~~(e)~~ A sample authorized vendor contract, if applicable.
3209 (e) ~~(f)~~ A sample form of payment instrument, if applicable.
3210 (f) ~~(g)~~ The name and address of the clearing financial
3211 institution or financial institutions through which the
3212 applicant's payment instruments will be drawn or through which
3213 such payment instruments will be payable.
3214 (g) ~~(h)~~ Documents revealing that the net worth and bonding
3215 requirements specified in s. 560.209 have been or will be
3216 fulfilled.
3217 (3) Each application for registration by an applicant that
3218 is a corporation shall contain ~~also set forth~~ such information

3219 as the commission ~~reasonably~~ requires by rule, including, but
3220 not limited to:
3221 (a) The date of the applicant's incorporation and state of
3222 incorporation.
3223 (b) A certificate of good standing from the state or
3224 country in which the applicant was incorporated.
3225 (c) A description of the corporate structure of the
3226 applicant, including the identity of any parent or subsidiary of
3227 the applicant, and the disclosure of whether any parent or
3228 subsidiary is publicly traded on any stock exchange.
3229 (d) The name, social security number, business and
3230 residence addresses, and employment history for the past 5 years
3231 for each executive officer, each director, each controlling
3232 shareholder, and the responsible person who will be in charge of
3233 all the applicant's business activities in this state.
3234 (e) The history of material litigation and criminal
3235 convictions, pleas of nolo contendere, and cases of adjudication
3236 withheld for each ~~executive~~ officer, each director, each
3237 controlling shareholder, and the responsible person who will be
3238 in charge of the applicant's registered activities.
3239 (f) Copies of the applicant's audited financial statements
3240 for the current year and, if available, for the immediately
3241 preceding 2-year period. In cases where the applicant is a
3242 wholly owned subsidiary of another corporation, the parent's
3243 consolidated audited financial statements may be submitted to
3244 satisfy this requirement. An applicant who is not required to
3245 file audited financial statements may satisfy this requirement
3246 by filing unaudited financial statements verified under penalty

3247 of perjury, as provided by the commission by rule.
3248 (g) An applicant who is not required to file audited
3249 financial statements may file copies of the applicant's
3250 unconsolidated, unaudited financial statements for the current
3251 year and, if available, for the immediately preceding 2-year
3252 period.
3253 (h) If the applicant is a publicly traded company, copies
3254 of all filings made by the applicant with the United States
3255 Securities and Exchange Commission, or with a similar regulator
3256 in a country other than the United States, within the year
3257 preceding the date of filing of the application.
3258 (4) Each application for registration submitted to the
3259 office by an applicant that is not a corporation shall contain
3260 ~~also set forth~~ such information as the commission ~~reasonably~~
3261 requires by rule, including, but not limited to:
3262 (a) Evidence that the applicant is registered to do
3263 business in this state.
3264 (b) The name, business and residence addresses, personal
3265 financial statement and employment history for the past 5 years
3266 for each individual having a controlling ownership interest in
3267 the applicant, and each responsible person who will be in charge
3268 of the applicant's registered activities.
3269 (c) The history of material litigation and criminal
3270 convictions, pleas of nolo contendere, and cases of adjudication
3271 withheld for each individual having a controlling ownership
3272 interest in the applicant and each responsible person who will
3273 be in charge of the applicant's registered activities.
3274 (d) Copies of the applicant's audited financial statements

3275 for the current year, and, if available, for the preceding 2
3276 years. An applicant who is not required to file audited
3277 financial statements may satisfy this requirement by filing
3278 unaudited financial statements verified under penalty of
3279 perjury, as provided by the commission by rule.
3280 (5) Each applicant shall designate and maintain an agent
3281 in this state for service of process.
3282 Section 59. Section 560.207, Florida Statutes, is amended
3283 to read:
3284 560.207 Renewal of registration; registration fee.--
3285 (1) Registration may be renewed for a 24-month period or
3286 the remainder of any such period without proration following the
3287 date of its expiration by furnishing such information as the
3288 commission requires by rule, together with the payment of the
3289 fees required under subsections (2), (3), and (4)~~, upon the~~
3290 ~~filing with the office of an application and other statements~~
3291 ~~and documents as may reasonably be required of registrants by~~
3292 ~~the commission~~. ~~However, the registrant must remain qualified~~
3293 ~~for such registration under the provisions of this part.~~
3294 (2) Each renewal of ~~All~~ registration must ~~renewal~~
3295 ~~applications shall~~ be accompanied by a nonrefundable renewal fee
3296 not to exceed $1,000. A registration expires on April 30 of the
3297 year in which the existing registration expires, unless the
3298 registrant has renewed his or her registration on or before that
3299 date. In no event shall a registration be issued for a period in
3300 excess of 24 months. The commission may adopt rules pursuant to
3301 ss. 120.536(1) and 120.54 to implement this section ~~All renewal~~
3302 ~~applications must be filed on or after January 1 of the year in~~

3303 ~~which the existing registration expires, but before the~~
3304 ~~expiration date of April 30. If the renewal application is filed~~
3305 ~~prior to the expiration date of an existing registration, no~~
3306 ~~late fee shall be paid in connection with such renewal~~
3307 ~~application. If the renewal application is filed within 60~~
3308 ~~calendar days after the expiration date of an existing~~
3309 ~~registration, then, in addition to the $1,000 renewal fee, the~~
3310 ~~renewal application shall be accompanied by a nonrefundable late~~
3311 ~~fee of $500. If the registrant has not filed a renewal~~
3312 ~~application within 60 calendar days after the expiration date of~~
3313 ~~an existing registration, a new application shall be filed with~~
3314 ~~the office pursuant to s. 560.205~~.
3315 (3) In addition to the renewal fee required under
3316 subsection (2), each registrant must pay ~~Every registration~~
3317 ~~renewal application shall also include~~ a 2-year nonrefundable
3318 registration renewal fee of $50 for each authorized vendor or
3319 location operating within this state or, at the option of the
3320 registrant, a total 2-year nonrefundable renewal fee of $20,000
3321 may be paid to renew the registration of all such locations
3322 currently registered at the time of renewal.
3323 (4) A registration may be reinstated only if the renewal
3324 fee and a nonrefundable late fee of $500 are filed within 60
3325 calendar days after the expiration of the existing registration.
3326 The office shall grant a reinstatement of registration if an
3327 application is filed during the 60-day period, and the
3328 reinstatement is effective upon receipt of the required fees and
3329 any information that the commission requires by rule. If a
3330 registrant does not file an application for reinstatement of the

3331 registration within the 60 calendar days after expiration of an
3332 existing registration, the registration expires and a new
3333 application must be filed with the office pursuant to s.
3334 560.205.
3335 Section 60. Subsection (1) of section 560.210, Florida
3336 Statutes, is amended to read:
3337 560.210 Permissible investments.--
3338 (1) A registrant shall at all times possess permissible
3339 investments with an aggregate market value calculated in
3340 accordance with United States generally accepted accounting
3341 principles of not less than the aggregate face amount of all
3342 outstanding funds transmissions ~~transmitted~~ and ~~outstanding~~
3343 payment instruments issued or sold by the registrant or an
3344 authorized vendor in the United States.
3345 Section 61. Subsection (2) of section 560.211, Florida
3346 Statutes, is amended to read:
3347 560.211 Records.--
3348 (2) The records required to be maintained by the code may
3349 be maintained by the registrant at any location if~~, provided~~
3350 ~~that~~ the registrant notifies the office in writing of the
3351 location of the records in its application or otherwise by
3352 amendment as prescribed by commission rule. The registrant shall
3353 make such records available to the office for examination and
3354 investigation in this state, as permitted by the code, within 7
3355 days after receipt of a written request.
3356 Section 62. Section 560.305, Florida Statutes, is amended
3357 to read:
3358 560.305 Application.--Each application for registration

3359 must ~~shall~~ be in writing and under oath to the office, in such
3360 form as the commission prescribes. The application must contain
3361 such information as the commission requires by rule, including,
3362 but not limited to ~~shall include the following~~:
3363 (1) The legal name, social security number, and residence
3364 and business addresses of the applicant if the applicant is a
3365 natural person, or, if the applicant is a partnership,
3366 association, or corporation, the name of every partner, officer,
3367 ~~or~~ director, member, controlling shareholder, or responsible
3368 person thereof.
3369 (2) The location of the principal office of the applicant.
3370 (3) The complete address of any other locations at which
3371 the applicant proposes to engage in such activities since the
3372 provisions of registration apply to each and every operating
3373 location of a registrant.
3374 (4) Such other information as the commission or office
3375 reasonably requires with respect to the applicant or any money
3376 transmitter-affiliated party of the applicant; however, the
3377 commission or office may not require more information than is
3378 specified in part II.
3379 Section 63. Subsections (1) and (4) of section 560.306,
3380 Florida Statutes, are amended to read:
3381 560.306 Standards.--
3382 (1) In order to qualify for registration under this part,
3383 an applicant must demonstrate to the office that he or she has
3384 such character and general fitness as will command the
3385 confidence of the public and warrant the belief that the
3386 registered business will be operated lawfully and fairly. The

3387 office may investigate each applicant to ascertain whether the
3388 qualifications and requirements prescribed by this part have
3389 been met. The office's investigation may include a criminal
3390 background investigation of all controlling shareholders,
3391 principals, officers, directors, members, and responsible
3392 persons of a check casher and a foreign currency exchanger and
3393 all persons designated by a foreign currency exchanger or check
3394 casher as an authorized vendor. Each controlling shareholder,
3395 principal, officer, director, member, and responsible person of
3396 a check casher or foreign currency exchanger, unless the
3397 applicant is a publicly traded corporation as defined by the
3398 commission by rule, a subsidiary thereof, or a subsidiary of a
3399 bank or bank holding company organized and regulated under the
3400 laws of any state or the United States, shall file a complete
3401 set of fingerprints. A fingerprint card submitted to the office
3402 must be taken by an authorized law enforcement agency ~~officer~~.
3403 The office shall submit the ~~Such~~ fingerprints ~~must be submitted~~
3404 to the Department of Law Enforcement for state processing and
3405 the Department of Law Enforcement shall forward the fingerprints
3406 to ~~or~~ the Federal Bureau of Investigation for ~~state and~~ federal
3407 processing. The cost for the fingerprint processing may be borne
3408 by the office, the employer, or the person subject to the
3409 background check. The Department of Law Enforcement shall submit
3410 an invoice to the office for the fingerprints received each
3411 month. The office shall screen the background results to
3412 determine if the applicant meets licensure requirements. The
3413 commission may waive by rule the requirement that applicants
3414 file a set of fingerprints or the requirement that such

3415 fingerprints be processed by the Department of Law Enforcement
3416 or the Federal Bureau of Investigation.
3417 (4) Each registration application and renewal application
3418 must specify the location at which the applicant proposes to
3419 establish its principal place of business and any other
3420 location, including authorized vendors operating in this state.
3421 The registrant shall notify the office of any changes to any
3422 such locations. ~~Any registrant may satisfy this requirement by~~
3423 ~~providing the office with a list of such locations, including~~
3424 ~~all authorized vendors operating in this state, not less than~~
3425 ~~annually.~~ A registrant may not transact business as a check
3426 casher or a foreign currency exchanger except pursuant to the
3427 name under which it is registered.
3428 Section 64. Section 560.308, Florida Statutes, is amended
3429 to read:
3430 560.308 Registration terms; renewal; renewal fees.--
3431 (1) Registration may be renewed for a 24-month period, or
3432 the remainder of any such period without proration, following
3433 the date of its expiration by furnishing such information as the
3434 commission requires by rule, together with the payment of the
3435 fees required under subsections (2), (3), and (4). Registration
3436 pursuant to this part shall remain effective through the
3437 remainder of the second calendar year following its date of
3438 issuance unless during such calendar year the registration is
3439 surrendered, suspended, or revoked.
3440 (2) Each application for renewal of registration must be
3441 accompanied by ~~The office shall renew registration upon receipt~~
3442 ~~of a completed renewal form and payment of~~ a nonrefundable

3443 renewal fee not to exceed $500. A registration expires on
3444 December 31 of the year in which the existing registration
3445 expires, unless the registrant has renewed his or her
3446 registration on or before that date ~~The completed renewal form~~
3447 ~~and payment of the renewal fee shall occur on or after June 1 of~~
3448 ~~the year in which the existing registration expires~~.
3449 (3) In addition to the renewal fee required by subsection
3450 (2), each registrant must pay a 2-year nonrefundable
3451 registration renewal fee of $50 for each authorized vendor or
3452 location operating within this state or, at the option of the
3453 registrant, a total 2-year nonrefundable renewal fee of $20,000
3454 may be paid to renew the registration of all such locations
3455 currently registered at the time of renewal.
3456 (4) ~~Registration that is not renewed on or before the~~
3457 ~~expiration date of the registration period automatically~~
3458 ~~expires.~~ A renewal ~~application and~~ fee~~,~~ and a nonrefundable late
3459 fee of $250~~,~~ must be filed within 60 calendar days after the
3460 expiration of an existing registration in order for the
3461 registration to be reinstated. The office shall grant a
3462 reinstatement of registration if application is filed during the
3463 60-day period, and the reinstatement is effective upon receipt
3464 of the required fees and any information that the commission
3465 requires by rule. If the registrant has not filed an ~~a renewal~~
3466 application within 60 calendar days after the expiration date of
3467 an existing registration, the registration expires and a new
3468 application must be filed with the office pursuant to s.
3469 560.307.
3470 Section 65. Subsection (2) of section 560.310, Florida

3471 Statutes, is amended to read:
3472 560.310 Records of check cashers and foreign currency
3473 exchangers.--
3474 (2) The records required to be maintained by the code may
3475 be maintained by the registrant at any location if~~, provided~~
3476 ~~that~~ the registrant notifies the office, in writing, of the
3477 location of the records in its application or otherwise by
3478 amendment as prescribed by commission rule. The registrant shall
3479 make such records available to the office for examination and
3480 investigation in this state, as permitted by the code, within 7
3481 days after receipt of a written request.
3482 Section 66. Subsections (2) and (4) of section 560.403,
3483 Florida Statutes, are amended to read:
3484 560.403 Requirements of registration; declaration of
3485 intent.--
3486 (2) A registrant under this part shall renew his or her
3487 intent to engage in the business of deferred presentment
3488 transactions or to act as a deferred presentment provider upon
3489 renewing his or her registration under part II or part III and
3490 shall do so by indicating his or her intent ~~on the renewal form~~
3491 ~~and~~ by submitting a nonrefundable deferred presentment provider
3492 renewal fee of $1,000, in addition to any fees required for
3493 renewal of registration under part II or part III.
3494 (4) The notice of intent of a registrant under this part
3495 who fails to timely renew his or her intent to engage in the
3496 business of deferred presentment transactions or to act as a
3497 deferred presentment provider on or before the expiration date
3498 of the registration period automatically expires. A renewal

3499 ~~declaration of intent and~~ fee~~,~~ and a nonrefundable late fee of
3500 $500~~,~~ must be filed within 60 calendar days after the expiration
3501 of an existing registration in order for the declaration of
3502 intent to be reinstated. The office shall grant a reinstatement
3503 of registration if application is filed during the 60-day
3504 period, and the reinstatement is effective upon receipt of the
3505 required fees and any information that the commission requires
3506 by rule. If the registrant has not filed a reinstatement of a
3507 renewal declaration of intent within 60 calendar days after the
3508 expiration date of an existing registration, the notice of
3509 intent expires and a new declaration of intent must be filed
3510 with the office.
3511 Section 67. Section 655.935, Florida Statutes, is amended
3512 to read:
3513 655.935 Search procedure on death of lessee.--If
3514 satisfactory proof of the death of the lessee is presented, a
3515 lessor shall permit the person named in a court order for the
3516 purpose, or if no order has been served upon the lessor, the
3517 spouse, a parent, an adult descendant, or a person named as a
3518 personal representative in a copy of a purported will produced
3519 by such person, to open and examine the contents of a safe-
3520 deposit box leased or co-leased by a decedent, or any documents
3521 delivered by a decedent for safekeeping, in the presence of an
3522 officer of the lessor; and the lessor, if so requested by such
3523 person, shall deliver:
3524 (1) Any writing purporting to be a will of the decedent,
3525 to the court having probate jurisdiction in the county in which
3526 the financial institution is located;

3527 (2) Any writing purporting to be a deed to a burial plot
3528 or to give burial instructions, to the person making the request
3529 for a search; and
3530 (3) Any document purporting to be an insurance policy on
3531 the life of the decedent, to the beneficiary named therein.
3532
3533 No other contents may be removed pursuant to this section and
3534 access granted pursuant to this section shall not be considered
3535 the initial opening of the safe-deposit box pursuant to s.
3536 733.6065 by a personal representative appointed by a court in
3537 this state.
3538 Section 68. Subsections (1) and (2) of section 655.936,
3539 Florida Statutes, are amended to read:
3540 655.936 Delivery of safe-deposit box contents or property
3541 held in safekeeping to personal representative.--
3542 (1) Subject to the provisions of subsection (3), the
3543 lessor shall immediately deliver to a ~~resident~~ personal
3544 representative appointed by a court in this state, upon
3545 presentation of a certified copy of his or her letters of
3546 authority, all property deposited with it by the decedent for
3547 safekeeping, and shall grant the ~~resident~~ personal
3548 representative access to any safe-deposit box in the decedent's
3549 name and permit him or her to remove from such box any part or
3550 all of the contents thereof.
3551 (2) If a ~~foreign~~ personal representative of a deceased
3552 lessee has been appointed by a court of any other state, a
3553 lessor may, at its discretion, after 3 months from the issuance
3554 to such ~~foreign~~ personal representative of his or her letters of

3555 authority, deliver to such ~~foreign~~ personal representative all
3556 properties deposited with it for safekeeping and the contents of
3557 any safe-deposit box in the name of the decedent if at such time
3558 the lessor has not received written notice of the appointment of
3559 a personal representative in this state, and such delivery is a
3560 valid discharge of the lessor for all property or contents so
3561 delivered. A ~~Such foreign~~ personal representative appointed by a
3562 court of any other state shall furnish the lessor with an
3563 affidavit setting forth facts showing the domicile of the
3564 deceased lessee to be other than this state and stating that
3565 there are no unpaid creditors of the deceased lessee in this
3566 state, together with a certified copy of his or her letters of
3567 authority. A lessor making delivery pursuant to this subsection
3568 shall maintain in its files a receipt executed by such ~~foreign~~
3569 personal representative which itemizes in detail all property so
3570 delivered.
3571 Section 69. Section 655.937, Florida Statutes, is amended
3572 to read:
3573 655.937 Access to safe-deposit boxes leased in two or more
3574 names.--
3575 (1) Unless ~~When~~ specifically provided in the lease or
3576 rental agreement to the contrary, if ~~covering~~ a safe-deposit box
3577 is ~~heretofore or hereafter~~ rented or leased in the names of two
3578 or more lessees, ~~that~~ access to the safe-deposit box will be
3579 granted to either lessee~~,~~ or to ~~either or the survivor, access~~
3580 ~~to the safe-deposit box shall be granted to~~:
3581 (a) Either or any of such lessees, regardless of whether
3582 or not the other lessee or lessees or any of them are living or

3583 competent.~~; or~~
3584 (b) Subject to s. 655.933, those persons named in s.
3585 655.933.
3586 (c) Subject to s. 655.935, those persons named in s.
3587 655.935.
3588 (d)~~(b)~~ Subject to s. 773.6065, the personal representative
3589 of the estate of either or any of such lessees who is deceased,
3590 or the guardian of the property of either or any of such lessees
3591 who is incapacitated.
3592 (2) In all cases described in subsection (1),~~; and, in~~
3593 ~~either such case, the provisions of s. 655.933 apply, and~~ the
3594 signature on the safe-deposit entry or access record,~~(~~or the
3595 receipt or acquittance, in the case of property or documents
3596 otherwise held for safekeeping,~~)~~ is a valid and sufficient
3597 release and discharge to the lessor for granting access to such
3598 safe-deposit box or for the delivery of such property or
3599 documents otherwise held for safekeeping.
3600 (3)~~(2)~~ A lessor may not be held liable for damages or
3601 penalty by reason of any access granted or delivery made
3602 pursuant to this section.
3603 (4) The right of access by a co-lessee is separate from
3604 the rights and responsibilities of other persons who may be
3605 granted access to a safe-deposit box after the death or
3606 incapacity of another co-lessee and such right of access is not
3607 subject to the provisions of s. 655.935 or s. 733.6065 or other
3608 requirements imposed upon personal representatives, guardians,
3609 or other fiduciaries.
3610 (5) After the death of a co-lessee, the surviving co-

3611 lessee or any other person who is granted access to the safe-
3612 deposit box pursuant to this section may make a written
3613 inventory of the box, which must be conducted by the person
3614 making the request in the presence of one other person as
3615 specified in this section. Each person present shall verify the
3616 contents of the box by signing a copy of the inventory under
3617 penalty of perjury.
3618 (a) If the person making the written inventory is the
3619 surviving co-lessee, the other person may be any other person
3620 granted access pursuant to this section, an employee of the
3621 institution where the box is located, or an attorney licensed in
3622 this state.
3623 (b) If the person making the written inventory is not a
3624 surviving co-lessee, the other person may be a surviving co-
3625 lessee, an employee of the institution where the box is located,
3626 or an attorney licensed in this state.
3627 Section 70. Section 733.6065, Florida Statutes, is amended
3628 to read:
3629 733.6065 Opening safe-deposit box.--
3630 (1) Subject to the provisions of s. 655.936(2), the
3631 initial opening of a ~~the decedent's~~ safe-deposit box that is
3632 leased or co-leased by the decedent shall be conducted in the
3633 presence of any two of the following persons: an employee of the
3634 institution where the box is located, the personal
3635 representative, or the personal representative's attorney of
3636 record. Each person who is present must verify the contents of
3637 the box by signing a copy of the inventory under penalties of
3638 perjury. The personal representative shall file the safe-deposit

3639 box inventory, together with a copy of the box entry record from
3640 a date which is 6 months prior to the date of death to the date
3641 of inventory, with the court within 10 days after the box is
3642 opened. Unless otherwise ordered by the court, this inventory
3643 and the attached box entry record is subject to inspection only
3644 by persons entitled to inspect an inventory under s. 733.604(1).
3645 The personal representative may remove the contents of the box.
3646 (2) The right to open and examine the contents of a safe-
3647 deposit box leased by a decedent, or any documents delivered by
3648 a decedent for safekeeping, and to receive items as provided for
3649 in s. 655.935 are separate from ~~in addition to~~ the rights
3650 provided for in subsection (1).
3651 Section 71. For the 2006-2007 fiscal year, the recurring
3652 sum of $700,515 is appropriated from the Regulatory Trust Fund
3653 to the Office of Financial Regulation for the purpose of
3654 implementing the provisions of s. 494.0033(2)(b), Florida
3655 Statutes, for third-party administration of the mortgage broker
3656 test.
3657 Section 72. This act shall take effect October 1, 2006.