

The Florida Senate  
**HOUSE MESSAGE SUMMARY**

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Prepared By: The Professional Staff of the Committee on Banking and Insurance

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BILL: CS/CS/SB 1012

INTRODUCER: Appropriations Committee; Banking and Insurance Committee; and Senator Richter

SUBJECT: Financial Institutions

DATE: April 28, 2014

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**I. Amendments Contained in Message:**

**House Amendment 1 – 261621** (body with title)

**House Amendment 2 – 107357** (body with title)

**II. Summary of Amendments Contained in Message:**

**House Amendment 1** clarifies that a state agency's authority to bring a civil or administrative action, or otherwise enforce state or federal laws against a financial institution is not limited, modified, or restricted by the provision in the bill that provides that a financial institution is not civilly liable for the actions or operations of a borrower solely by virtue of extending a loan or a line of credit to such borrower.

**House Amendment 2** contains substantially similar provisions contained in CS/CS/HB 631 and SB 666, which are bills relating to loan originators, mortgage brokers, and mortgage lenders. The amendment revises provisions governing non-depository loan originators, mortgage brokers, and lender businesses subject to regulation by the Office of Financial Regulation (OFR) under ch. 494, F.S. The amendment includes the following changes:

- Provides licensees an additional 2 months (January and February) to renew their license if such licensees remit a reinstatement or late fee in addition to the respective registry fees by March 1. If a licensee fails to renew by March 1 and pay all applicable fees, the license expires and the applicant must apply for a new license and comply with the applicable licensing requirements for the respective license category.
- Authorizes the OFR to take administrative action against applicants found to be in violation of the Nationwide Mortgage Licensing System (registry) Rules of Conduct relating to pre-licensure examination misconduct.
- Authorizes the OFR to conduct joint or concurrent examinations with any state or federal regulatory agency and to share examination reports with those regulators.
- Authorizes the Financial Services Commission to adopt by rule the deadline for mortgage brokers and mortgage lenders to file a report of condition also known as the registry's Mortgage Call Report.

- Revises provisions that are affected by the federal Dodd-Frank Act<sup>1</sup> and the related Consumer Financial Protection Bureau (CFPB) regulations. These provisions include:
  - Reenacts and updates the OFR's authority to enforce the federal Real Estate Settlement Procedures Act (RESPA), the Truth in Lending Act (TILA), and related regulations of the Consumer Financial Protection Bureau due to the recent significant changes to those federal laws and regulations.
  - Revises the definition of "loan origination fee" to exclude payment for processing a mortgage application. Currently, the fee is defined as "the total compensation from any source received by a mortgage broker acting as a loan originator," and requires that any payment for processing the mortgage loan application must be included in the fee and paid to the mortgage broker. Under Dodd-Frank, mortgages that meet certain requirements are classified as "qualified mortgages" and receive a "safe harbor" or "rebuttable presumption" against certain borrower lawsuits. One of the requirements is a 3 percent cap on points and fees for loan amounts that are \$100,000 or greater. Lesser loan amounts also have fee cap restrictions. Due to Florida's current requirement for the processing fee to be part of the origination fee, mortgage broker businesses must include this fee towards the 3 percent cap. If this fee were not required to be part of the origination fee, it would not have to be included unless the processing company being used was affiliated with the creditor and/or mortgage broker.
  - Amends s. 494.0067, F.S., to remove the requirement that a mortgage lender provide an applicant for a mortgage loan a good faith estimate of the costs the applicant can expect to pay in obtaining a mortgage loan. Federal regulations relating to the TILA require this disclosure.
  - Repeals s. 494.0068, F.S., relating to the loan application process, which set forth required disclosures for mortgage lenders. The amendment also revises s. 494.0038, F.S., to remove specified disclosure requirements. Federal regulations require mandatory disclosures under Regulation X of RESPA.
  - Repeals part IV of ch. 494, F.S., the 2002 Florida Fair Lending Act, which imposes requirements on high cost mortgage loans that substantially mirror the requirements of the federal Home Ownership and Equity Protection Act (HOEPA), but adds other provisions. Subsequent to the enactment of Florida's act, the Dodd-Frank Act substantially expanded the scope of HOEPA coverage to include purchase-money mortgages and open-end credit plans (i.e., home equity lines of credit) and amended HOEPA's coverage tests. Dodd-Frank also added new protections for high-cost mortgages, including a requirement that consumers receive homeownership counseling before obtaining a high-cost mortgage. The Florida act has not been substantially amended or updated since 2002 and does not include the Dodd Frank provisions.
  - Repeals s. 494.0028, F.S., which authorizes arbitration regarding mortgage broker agreements, servicing agreements, loan applications or purchase agreements. Dodd Frank amends TILA by prohibiting the inclusion of mandatory arbitration terms or any other non-judicial procedure concerning a residential mortgage loan or home equity line of credit secured by a principal dwelling.
- Repeals part V, of ch. 494, F.S., entitled "Loans under Florida Uniform Land Sales Practices Law," which prescribes terms and conditions for mortgage loans of \$35,000 or less that are secured by vacant land and sold to a mortgagee, excluding a financial institution. This

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203), enacted July 21, 2010.

provision was enacted in 1977; however, the statutory cite for penalties, s. 494.05, F.S., was repealed in 1986.

These provisions will have an indeterminate fiscal impact on state revenue and expenditures, as the number of licensees that would use the late renewal and reactivation process is unknown. The OFR anticipates that existing resources will be sufficient for expenditures and workload related to implementing this bill.