

THE FLORIDA SENATE
2014 SUMMARY OF LEGISLATION PASSED
Committee on Banking and Insurance

CS/CS/SB 1012 — Financial Services

by Appropriations Committee; Banking and Insurance Committee; and Senator Richter

The Office of Financial Regulation (OFR) regulates state-chartered financial institutions, loan originators, mortgage brokers, mortgage lenders, and other specified entities that provide financial services. The bill provides the following changes relating to the regulation of these financial services:

Financial Institutions

- Updates provisions of the Florida Control of Money Laundering in Financial Institutions Act to codify the requirements of the Federal USA PATRIOT Act and the Office of Foreign Asset Control, which will allow the OFR to enforce these provisions.
- Expands the scope of persons subject to prohibited acts and practices to include affiliates and related interests.
- Authorizes the OFR to issue immediate cease and desist orders for persons using misleading banking-related names to perpetrate fraud on Florida consumers.
- Clarifies permissible activities for out of state trust companies and business trusts.
- Expands competitive equality for Florida-chartered financial institutions by clarifying that the par value requirement only applies to the settlement of checks between financial institutions, and provides that such institutions may charge fees to cash checks.
- Expands competitive equality to Florida-chartered credit unions by authorizing employee benefit plans and specified types of insurance coverage that is consistent with regulations governing federal credit unions.
- Provides a general rule of preemption to the state for financial or lending activities, and requires financial institutions to report any administrative or civil proceedings or civil investigations initiated by a county or municipality to the OFR.
- 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.
- Repeals the \$2,000 annual assessment imposed on each international representative office, international administrative office, and international trust company.

Loan Originators, Mortgage Brokers, and Mortgage Lenders

- Provides licensees an additional 2 months to renew their license if such licensees remit a reinstatement or late fee in addition to the respective annual registry fees.
- 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.
- Revises provisions that are affected by the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) and the related regulations of the Consumer Financial Protection Bureau (CFPB). These changes include the following:

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- o 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 CFPB due to the recent significant changes to those federal laws and regulations.
- o Revises the definition of "loan origination fee" to exclude payment for processing a mortgage application. Currently, any payment for processing the mortgage loan application must be included in the fee and paid to the mortgage broker. Under the Dodd-Frank Act, mortgages that meet certain requirements are deemed "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. Under the bill, this fee does not have to be included unless the processing company being used was affiliated with the creditor and/or mortgage broker.
- o Removes 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.
- o Repeals the 2002 Florida Fair Lending Act, which imposes requirements on high cost mortgage loans that are similar to the 2002 requirements of the federal Home Ownership and Equity Protection Act (HOEPA), but adds other provisions. Subsequent to the enactment of Florida's act, the 2010 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. The Dodd-Frank Act also adds 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 provisions of the Dodd-Frank Act.
- o Repeals the arbitration provision, which authorizes arbitration between noninstitutional investors or borrowers and a mortgage lender or broker regarding mortgage broker agreements, servicing agreements, loan applications or purchase agreements. The Dodd Frank Act amends TILA by prohibiting the inclusion of mandatory arbitration terms or any other non-judicial procedure to resolve disputes concerning a residential mortgage loan or home equity line of credit secured by a principal dwelling.
- Repeals the "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.

If approved by the Governor, these provisions take effect July 1, 2014.

Vote: Senate 38-0; House 118-0