

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 1326

SPONSOR: Banking and Insurance Committee and Senator Lee

SUBJECT: Mortgage Brokers and Lenders

DATE: March 16, 1999

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	<u>Keating</u>	<u>Wood</u>	<u>FR</u>	<u>Favorable</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

Committee Substitute for Senate Bill 1326 makes the following changes to the laws regulating mortgage brokers and lenders in chapter 494, Florida Statutes:

### *General Provisions (Chapter 494, F.S.)*

- ◆ The committee substitute adds a definition of “mortgage loan” that has the effect of eliminating regulation of mortgage loans on commercial property if the borrower is a business entity and the lender is an institutional investor (a business entity that invests in mortgage loans). The committee substitute adds and revises other definitions for certain terms that are commonly used in statute and by the industry.
- ◆ Authorizes the department to conduct out-of-state examinations, consolidates examination, application, and renewal fees resulting in an increase in some application and renewal fees. Specifies that application, renewal and reactivation fees for mortgage brokers, mortgage broker business, mortgage lenders, and correspondent mortgage lenders are nonrefundable.
- ◆ Provides that a plea of nolo contendere to a crime involving fraud, dishonest dealing, or any other act of moral turpitude, as well as failure to timely pay any fee, charge, or fine, are grounds for disciplinary action.
- ◆ Requires quarterly reports listing associates or loan originators employed by licensees.
- ◆ Prohibits licensees from paying a fee or commission to an unlicensed person.
- ◆ Authorizes independent contractors to contract directly with mortgage lenders and prohibits independent contractors from contracting with more than one mortgage lender at a time.
- ◆ Provides that employees of mortgage brokers whose activities are ministerial and clerical are not required to obtain a license as a mortgage broker.
- ◆ Authorizes DBF to adopt rules to allow electronic submission of application forms, documents, and fees by licensees.

***Mortgage Brokerage Business and Mortgage Brokers (Part II, Chapter 494, F.S.)***

- ◆ Clarifies disclosure requirements for written agreements, and eliminates the requirement to physically locate a principal place of business in Florida.
- ◆ Requires licensees to report pleas of nolo contendere to crimes involving fraud, dishonest dealing, or any other act of moral turpitude and report any felony conviction.

***Mortgage Lenders and Correspondent Mortgage Lenders (Part III, Chapter 494, F.S.)***

- ◆ Provides that each mortgage lender be accountable for any activity of an independent contractor.
- ◆ Corrects and conforms statutory language to state that a mortgage lender or correspondent mortgage lender is not prohibited from acting as a “mortgage brokerage business.”

The bill substantially amends the following sections of the Florida Statutes: 494.001, 494.0011, 494.0012, 494.00125, 494.0016, 494.0025, 494.0031, 494.0032, 494.0033, 494.00331, 494.0034, 494.0036, 494.0038, 494.0039, 494.004, 494.0041, 494.0061, 494.0062, 494.0064, 494.0066, 494.0067, 494.0072, and 494.0073, F.S. The bill creates s. 494.00165, F.S., and repeals s. 494.0037, F.S.

**II. Present Situation:*****General Provisions***

Chapter 494, F.S., governs mortgage brokerage and mortgage lending. Part I of chapter 494, F.S., provides definitions and provisions that apply generally to the mortgage brokerage and mortgage lending industry. Part I also outlines the general powers and duties of the regulatory agency, the Department of Banking and Finance (“DBF”),<sup>1</sup> lists prohibited practices, and provides penalties for violations of the act. Under current law, prohibited practices include:

- ◆ Acting as a mortgage broker, a correspondent mortgage lender, or a mortgage lender<sup>2</sup> without a license;
- ◆ Engaging in sales, negotiations, promotions, advertisements or the hypothecation of mortgage transaction with the intent to defraud;
- ◆ Knowingly concealing a material fact from the department;
- ◆ Engaging in false or misleading advertisements;
- ◆ Engaging in unauthorized banking business as defined by s. 655.922, F.S.;
- ◆ Failing to disclose to the DBF the failure to meet net worth requirements;

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<sup>1</sup>Generally, the DBF is authorized to adopt rules necessary to administrate the act, to collect fees, fines and charges, to examine licensees, and to investigate complaints of prohibited practices. The DBF may also issue subpoenas, seek injunctions and/or cease and desist orders to restrain prohibited practices or other violations of the act.

<sup>2</sup>The differences between a mortgage lender and a correspondent mortgage lender are compared in Table C below.

- ◆ Violating 18 U.S.C. s. 709, by falsely advertising or misusing names to convey the false impression that such name or business has some connection with, or authorization from the Government of the United States, or any agency thereof; and,
- ◆ Recording a mortgage brokerage agreement or other document not rendered by a court, which purports to enforce the terms of a mortgage brokerage agreement.

### ***Mortgage Brokerage Business and Mortgage Brokers***

Part II of chapter 494, F.S., regulates the licensure and eligibility requirements for mortgage broker business and for mortgage brokers. Section 494.003, F.S., outlines which entities are exempt from the requirements of this part<sup>3</sup> and which entities are exempt from licensure under this part.<sup>4</sup>

Separate licenses are required to operate a mortgage brokerage business, and to provide services as a mortgage broker and a mortgage lender. Table A compares the licensure requirements and grounds for license denial for mortgage brokerage businesses and mortgage brokers.

<i>Table A. Comparison of license requirements and grounds for licensure denial for mortgage brokerage business and mortgage brokers.</i>		
	MORTGAGE BROKERAGE BUSINESS	MORTGAGE BROKER
Licensure requirements	<ul style="list-style-type: none"> <li>• completed application and a \$350 fee</li> <li>• the business must have a qualified mortgage broker pursuant to s. 494.0035, F.S.</li> <li>• Officers, directors and ultimate equitable owners of 10 percent or greater interest in the business may be required to submit a set of fingerprints to the DBF</li> <li>• each mortgage brokerage business must have a designated principal broker</li> <li>• each branch office must have a designated branch broker</li> </ul>	<ul style="list-style-type: none"> <li>• must be at least 18 years of age</li> <li>• passed written test adopted by the DBF, completed application and \$200 fee, and filed a complete set of fingerprints with the DBF</li> <li>• completed 24 hours of classroom education on primary and subordinate financing transactions and the rules of chapter 494, F.S.<sup>5</sup></li> <li>• a broker is prohibited from being an associate of more than one mortgage brokerage business</li> </ul>

<sup>3</sup>Exempted entities include banks, trust companies, bank holding companies, and agencies of the state or of the federal government.

<sup>4</sup>Exempted entities or persons include licensed insurance companies, registered securities dealers, federally licensed small business investment companies, any person acting in a fiduciary capacity conferred by a court, and wholly-owned subsidiaries of banks or savings and loans.

<sup>5</sup>This requirement is for those filing an application after July 1, 1992.

<i>Table A. Comparison of license requirements and grounds for licensure denial for mortgage brokerage business and mortgage brokers.</i>		
	MORTGAGE BROKERAGE BUSINESS	MORTGAGE BROKER
Grounds for denial of a license, permit or registration <sup>6</sup>	<ul style="list-style-type: none"> <li>committed any violation specified in chapter 494, F.S.</li> <li>has pending any criminal or administrative enforcement action, in any jurisdiction, which involves fraud, dishonest dealing, or any other act of moral turpitude. <sup>7</sup></li> </ul>	<ul style="list-style-type: none"> <li>committed any violation specified in chapter 494, F.S.</li> <li>has pending any criminal or administrative enforcement action, in any jurisdiction, which involves fraud, dishonest dealing, or any other act of moral turpitude</li> </ul>

Table B compares the fee schedules and the maximum period of time a license may remain inactive before expiring for mortgage brokerage business and mortgage brokers.

<i>Table B. Comparison of fee schedules and the maximum period of time a license may remain inactive before expiration for mortgage brokerage business and mortgage brokers</i>		
	MORTGAGE BROKERAGE BUSINESS	MORTGAGE BROKER
Application Fee	\$350	(may not exceed) \$200
Biennial Renewal Fee	(may not exceed) \$300	(may not exceed) \$150
Branch Office Permit Fee	(may not exceed) \$150	N/A
Late Renewal (Reactivation) Fee	\$100	Same
Maximum period of time a license may remain inactive before expiration	6 months	2 years

### ***Mortgage Broker Disclosure Requirements***

Mortgage brokerage service agreements must be in writing and must disclose:

- ◆ Services to be provided, and any rates, fees, or points that the mortgage business will receive;
- ◆ Any fee arrangements and the range of the mortgage brokerage fees.

Prior to entering into a written agreement, accepting an application, an application fee, or any other fee for service, a mortgage brokerage business must disclose in writing that:

- ◆ The mortgage business may not make mortgage loans or commitments, but may provide a commitment or lock-in rate it has received from a lender, on behalf of that lender;

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<sup>6</sup>According to the DBF, “permits” and “registrations” are holdover terms from earlier versions of the mortgage law and are anachronistic. Although current law requires that each branch office of a mortgage brokerage business have a “permit,” the permit is, according to the DBF, actually a branch license.

<sup>7</sup>These acts are grounds for license denial if committed by the designated principal mortgage broker, any officer, director, partner, or joint venturer, or any natural person owning 10 percent or greater interest in the business.

- ◆ There is no guarantee for acceptance into any loan program, or any specific loan terms or conditions;
- ◆ Good faith estimate of all applicable fees<sup>8</sup>, and that any excess shall be returned within 60 days of closing.

### ***Principal Place of Business Requirements***

A mortgage brokerage business' principal place of business, or any branch office, must be located in the state and consist of at least one enclosed room or building which shall contain all required records and files. The building or room must comply with all local ordinances and must have posted all occupational licenses and a sign that contains the name of the licensee and the word "Licensed Mortgage Brokerage Business."

### ***Requirements of Licensees - Notification of Wrongdoing***

Licensees are required to notify the DBF in writing of:

- ◆ Any conviction of a crime or administrative action involving fraud or an act of moral turpitude by the licensee or any person named in s. 494.0031(3), F.S.<sup>9</sup>, within 30 days of conviction;
- ◆ Any bankruptcy action not later than 7 business days after the action is instituted; and
- ◆ Any change in the form of business organization or any change of a person named, pursuant to s. 494.0031(3), F.S., with 30 days after the change is effective.

Section 494.0037, F.S., contains books and records requirements for all licensees under chapter 494, F.S., however, that section is located within Part II, which is applicable to mortgage brokers and mortgage brokerage businesses, not to lenders. Section 494.0016, F.S., is virtually identical and is located within Part I, which contains the general provisions applicable to all licensees.

### ***Mortgage Lenders and Correspondent Mortgage Lenders***

Part III of chapter 494, F.S., regulates the licensure and eligibility requirements for mortgage lenders and for correspondent mortgage lenders. Section 494.006, F.S., outlines which entities are exempt from the requirements of this part<sup>10</sup> and which entities are exempt from licensure under

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<sup>8</sup>A mortgage brokerage business may not accept any fee in connection with a mortgage loan other than an application fee, credit report fee, property appraisal fee or other third party fee prior to obtaining a written commitment from a qualified lender. (Section 494.0038(4), F.S.)

<sup>9</sup>These persons include the designated principal mortgage broker, any officer, director, partner, or joint venturer, or any natural person owning 10 percent or greater interest in the business.

<sup>10</sup>Exempted entities include banks, trust companies, bank holding companies, licensed insurance companies, any person acting in a fiduciary capacity conferred by a court, wholly-owned subsidiaries of a bank holding company or a savings and loan holding company, a person who sells their own real property, a person who receives a mortgage as security for a material lien, a person who makes only non-residential loans and sells only to institutional investors, agencies of the state or of the federal

this part.<sup>11</sup> Separate licenses are required to provide services as a mortgage lender and a correspondent mortgage lender. Table C compares the licensure requirements and grounds for license denial for a mortgage lender and a correspondent mortgage lender.

<i>Table C. Comparison of license requirements and grounds for licensure denial for a mortgage lender and correspondent mortgage lender.</i>		
	MORTGAGE LENDER	CORRESPONDENT MORTGAGE LENDER
License requirements	<ul style="list-style-type: none"> <li>completed application and a \$500 fee</li> <li>Audited financial statements showing a net worth of at least \$250,000, which must be maintained during licensure</li> <li>a surety bond of \$10,000 payable to the state</li> <li>applicant must be a registered corporation, general or limited partnership, limited liability company or other lawful business entity</li> <li>other information as may be required by the DBF to determine license eligibility</li> <li>officers, directors and ultimate equitable owners of 10 percent or greater interest in the business may be required to submit a set of fingerprints to the DBF</li> </ul>	<ul style="list-style-type: none"> <li>completed application and a \$400 fee</li> <li>Audited financial statements showing a net worth of at least \$25,000, which must be maintained during licensure</li> <li>a surety bond of \$10,000 payable to the state</li> <li>applicant must be a registered corporation, general or limited partnership, limited liability company or other lawful business entity</li> <li>other information as may be required by the DBF to determine license eligibility</li> <li>officers, directors and ultimate equitable owners of 10 percent or greater interest in the business may be required to submit a set of fingerprints to the DBF</li> <li>a correspondent mortgage lender may make a mortgage loan but may not service the loan for more than four months after the date the mortgage was made or acquired by the correspondent mortgage lender.</li> </ul>
Grounds for denial of a license	<ul style="list-style-type: none"> <li>committed any violation specified in s. 494.0072, F.S., or</li> <li>has pending any criminal or administrative enforcement action, in any jurisdiction, which involves fraud, dishonest dealing, or any other act of moral turpitude.<sup>12</sup></li> </ul>	<ul style="list-style-type: none"> <li>same</li> <li>same</li> </ul>

Table D compares the fee schedules and the maximum period of time a license may remain inactive before expiring for a mortgage lender and a correspondent mortgage lender.

government, a consumer finance company licensed under chapter 516, F.S., any person who makes or acquires a mortgage with their own funds (or sells such a mortgage) but do not hold themselves out as a mortgage lender business, and a person who acts solely under contract as an agent of the state or federal government in servicing mortgage loans.

<sup>11</sup>Exempted entities or persons include employees of a licensed mortgage lender when acting under the scope of employment, and a wholly-owned subsidiary corporation of a consumer finance company licensed pursuant to chapter 516, F.S., on or before October 1, 1991.

<sup>12</sup>These acts are grounds for license denial if committed by the designated principal mortgage broker, any officer, director, partner, or joint venturer, or any natural person owning 10 percent or greater interest in the business.

*Table D. Comparison of fee schedules and the inactive license dormancy threshold period for a mortgage lender and a correspondent mortgage lender*

	MORTGAGE LENDER	CORRESPONDENT MORTGAGE LENDER
Application Fee	(may not exceed) \$500	(may not exceed) \$400
Biennial Renewal Fee	(may not exceed) \$500	same
Branch Office Permit Fee	\$250 (for each branch office)	same
Late Renewal (Reactivation) Fee	\$100	same
Maximum period of time a license may remain inactive before expiration	6 months	same

### III. Effect of Proposed Changes:

#### Sections 1 through 7 amends Part I of Chapter 494 - General Provisions

**Section 1.** Amends s. 494.001, F.S., adding definitions for the following terms to the definitions section of the chapter: “act as a loan originator;” “branch office;” “employed;” “mortgage loan;” and, “principal place of business.” These terms are not defined in the statute although they are referred to throughout chapter 494, F.S., and are used commonly by the industry.

The definition that is added for “mortgage loan” has the effect of narrowing the scope of the chapter. In general, regulation would continue to apply to residential loans, and loans on commercial real property if the borrower is a natural person or the lender is a noninstitutional investor. This has the effect of de-regulating mortgage loans on commercial real property if the borrower is a business entity and the lender is an institutional investor, which is a defined term that includes all business entities that invest in mortgage loans.

The term “acting as a loan originator” means being employed by a mortgage lender or correspondent mortgage lender for compensation or gain to negotiate or offer to negotiate a mortgage loan. Under section 23 of the committee substitute, mortgage lenders or correspondent mortgage lenders must file reports providing information as to each loan originator employed with DBF. A “mortgage loan” means a residential or certain commercial loans.

This section also revises the definition for “act as a mortgage broker,” “associate,” “mortgage broker fee” and “service a mortgage loan.” For purposes of clarification, the definition of “act as a mortgage broker” is amended to allow an employee whose activities are clerical, which may include quoting available interest rates or loan terms and conditions, is not acting as a mortgage broker and thus does not have to be licensed. The current definition of “associate” allows an independent contractor to act as a mortgage broker of a mortgage brokerage business, but does not allow an independent contractor to act as a mortgage broker on behalf of a mortgage lender. For purposes of consistency, the definition of “associate” would be expanded to allow an independent contractor to act as a mortgage broker on behalf of a mortgage lender. The term

“mortgage broker fee” is incorrectly used in the statute to refer to a “mortgage brokerage fee.” This committee substitute corrects this error.

**Section 2.** Amends s. 494.0011(2), F.S., 1998 Supplement, to provide that DBF may adopt rules to allow electronic submission of forms, documents, or fees by licensees. The department may also adopt rules to accept certification of compliance with the requirements of this act in lieu of requiring submission of documents.

**Section 3.** Amends s. 494.0012, F.S., eliminating fees for examinations and authorizing the DBF to conduct out-of-state examinations at its discretion. The committee substitute also consolidates examination, application, and renewal fees resulting in an increase in some application and renewal fees. (See also Sections 8, 9, 13, 19-22 of this committee substitute for similar consolidation provisions.) This section has an effective date of September 1, 2000.

**Section 4.** Amends s. 494.00125, F.S., correcting and conforming statutory references by deleting the term “registration” and “permit” and substituting “license” as appropriate.

**Section 5.** Amends s. 494.0016, F.S., clarifying the DBF’s rulemaking authority to prescribe the minimum information to be maintained by licensees.

**Section 6.** Creates s. 494.00165, F.S., combining current requirements relating to advertising (currently located within ss. 494.0025 and 494.0067, F.S.) and locating these provisions within Part I of the chapter thereby making these provisions applicable to all licensees.

**Section 7.** Amends s. 494.0025, F.S., removing redundant language pertaining to prohibited advertising practices and prohibiting licensees from paying a fee or commission to an unlicensed person and deletes advertising provisions that will be included in new s. 494.00165.

## **Sections 8 through 18 amends Part II of Chapter 494 - Mortgage Brokers**

**Section 8.** Amends s. 494.0031, F.S., eliminating the DBF’s authority to set fees by rule and establishes a nonrefundable \$425 initial application fee for mortgage brokerage businesses (up from \$350). Examination fees are eliminated in an earlier section of this committee substitute. Technical revisions are also made to conform terms and eliminate unnecessary language. (See Section 3 of this committee substitute).

**Section 9.** Amends s. 494.0032, F.S., eliminating the DBF’s authority to set fees by rule and establishes a nonrefundable renewal fee of \$375 for mortgage brokerage businesses (up from \$300) and a nonrefundable \$225 fee for the renewal of each branch office license (up from \$150). Examination fees are eliminated in an earlier section of this committee substitute. In addition, technical revisions are made to conform terms, eliminate unnecessary language and clarify existing language. (See Section 3 of this committee substitute.) Finally, the committee substitute provides a procedure and sets the nonrefundable fee (\$100) for the reactivation of an inactive license.

**Section 10.** Amends s. 494.0033, F.S., setting the nonrefundable mortgage broker’s license application fee at \$200. In addition, technical revisions are made to conform terms, eliminate unnecessary language and clarify existing language.



**Section 11.** Amends s. 494.00331, F.S., prohibiting a licensed mortgage broker from acting simultaneously as an associate of more than one licensed mortgage brokerage business, mortgage lender or correspondent mortgage lender.

**Section 12.** Amends s. 494.0034, F.S., eliminating the DBF's authority to set fees by rule up to \$150 and, instead, establishes a nonrefundable \$150 license renewal fee for mortgage brokers. In addition, technical revisions are made to conform terms, eliminate unnecessary language and clarify existing language.

**Section 13.** Amends s. 494.0036, F.S., eliminating the DBF's authority to set fees by rule up to \$150 and, instead, establishes a nonrefundable \$225 application fee for mortgage brokerage business branch offices. Examination fees are eliminated in an earlier section of this committee substitute. In addition, technical revisions are made to conform terms, eliminate unnecessary language and clarify existing language. (See Section 3 of this committee substitute.) New subsection (3) is language moved to this section from s. 494.0039 (3), F.S.

**Section 14.** Amends s. 494.0038, F.S., clarifying that disclosures are required upon execution of a written agreement or acceptance of an application fee, credit report fee, property appraisal fee, or any other third party fee.

**Section 15.** Amends s. 494.0039, F.S., eliminating the requirement to physically locate a principal place of business in Florida.

**Section 16.** Amends s. 494.004, F.S., requiring mortgage brokers and mortgage brokerage businesses to report pleas of nolo contendere to crimes involving fraud, dishonest dealing, or any other act of moral turpitude within 30 days after the plea is entered since pleas of nolo are made grounds for disciplinary action under Section 18 of this committee substitute, and report any felony conviction within 30 days after the date of conviction or plea of nolo contendere.

**Section 17.** Effective January 1, 2000, the committee substitute amends s. 494.004, F.S., requiring mortgage brokerage businesses to file an initial report with the DBF identifying all mortgage brokers who were associates of the mortgage business between January 1, 2000, and March 31, 2000. Subsequently, mortgage brokerage businesses will only file a quarterly report identifying any person who became or ceased to be an associate during the previous quarter.

**Section 18.** Amends s. 494.0041, F.S., providing that a plea of nolo contendere to a crime involving fraud, dishonest dealing, or any other act of moral turpitude, as well as failure to timely pay any fee, charge, or fine, are grounds for disciplinary action.

### **Sections 19 through 27 amends Part III of Chapter 494 - Mortgage Lenders**

**Section 19.** Amends s. 494.0061, F.S., eliminating the DBF's authority to set fees by rule and establishes a \$575 initial application fee for mortgage lenders (up from \$500). In addition, examination fees are eliminated in an earlier section of this committee substitute. Technical revisions are also made to conform terms and replace unnecessary language (See Section 3 of this committee substitute).

**Section 20.** Amends s. 494.0062, F.S., eliminating the DBF's authority to set fees by rule and establishes a \$500 initial application fee for correspondent mortgage lenders (up from \$400). In addition, examination fees are eliminated in an earlier section of this committee substitute. Technical revisions are also made to conform terms and replace unnecessary language (See Section 3 of this committee substitute).

**Section 21.** Amends s. 494.0064, F.S., eliminating the DBF's authority to set fees by rule and establishes a nonrefundable \$475 biennial renewal fee for correspondent mortgage lenders (down from \$500) and a nonrefundable \$575 biennial renewal fee for mortgage lenders (up from \$500). In addition, examination fees are eliminated in an earlier section of this committee substitute. Also, license reactivation fees, which are nonrefundable, are established at \$100. Technical revisions are also made to conform terms and replace unnecessary language (See Section 3 of this committee substitute).

**Section 22.** Amends s. 494.0066, F.S., eliminating the DBF's authority to set fees by rule and establishes a nonrefundable \$325 application fee for mortgage lender and correspondent mortgage lender branch offices (up from \$250). In addition, examination fees are eliminated in an earlier section of this committee substitute. Technical revisions are made to conform terms, replace unnecessary language and clarify existing language (See Section 3 of this committee substitute.)

**Section 23.** Amends s. 494.0067, F.S., deleting subsection (9) from s. 494.0067, F.S., and relocating it in new s. 494.00165, F.S. (See Section 6 of this committee substitute.)

**Section 24.** Effective January 1, 2000, the committee substitute amends s. 494.0067, F.S., requiring mortgage lenders and correspondent mortgage lenders to file an initial report with the DBF identifying all loan originators who were employed by the mortgage lender or correspondent mortgage lender from January 1, 2000, to March 31, 2000. Subsequently, mortgage lenders and correspondent mortgage lenders will file a quarterly report identifying any person who became or ceased to be a loan originator during the previous quarter.

**Section 25.** Amends s. 494.0072, F.S., providing that a plea of guilty, or a plea of nolo contendere, to a crime involving fraud, dishonest dealing, or any other act of moral turpitude, is grounds for disciplinary action against a mortgage lender or correspondent mortgage lender if adjudication is withheld. In addition, the committee substitute provides that failure to timely pay any fee, charge, or fine is grounds for disciplinary action against a mortgage lender or correspondent mortgage lender. Finally, the committee substitute holds each mortgage lender accountable for any activity of an independent contractor undertaken in connection with a mortgage transaction of the lender.

**Section 26.** Amends s. 494.0073, F.S., correcting and conforming statutory language to state that a mortgage lender or correspondent mortgage lender is not prohibited from acting as a "mortgage brokerage business."

**Section 27.** Repeals s. 494.0037, F.S., which contains books and records requirements for licensees under chapter 494, F.S., and is virtually identical to an existing statutory provision (s. 494.0016, F.S.). Deleting s. 494.0037, F.S., is necessary in order to eliminate this unnecessary, and potentially conflicting, section.

**Section 28.** Except as otherwise provided, this act shall take effect date of October 1, 1999.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

Licensing fees are deposited into the Banking and Finance Regulatory Trust Fund and are subject to a 7.3 percent General Revenue Service Charge. The elimination of Chapter 494 examination fees and the increase in biennial licensing fees results in a net increase in fiscal year 2000-01 to the trust fund of \$247,000 and an increase to the General Revenue Fund from the service charge of \$20,000. In fiscal year 2001-02, the trust fund will realize a loss of \$171,000 and the General Revenue Fund will loss \$13,000 in service charges.

##### **B. Private Sector Impact:**

Mortgage brokers and others licensed by DBF will benefit by having their examination fees eliminated as well as being able to submit applications, fees, and other documents via electronic submission. Additionally, mortgage brokers who are independent contractors would be permitted to deal directly with lenders and licensees would be able to take examinations at more convenient locations out of Florida.

Registration fees will be increased under this committee substitute by \$75.00 (\$100 for correspondent mortgage lenders). Table E compares the current fee schedule and the proposed fee structure under Committee Substitute for Senate Committee substitute 1326 for mortgage brokerage business and mortgage brokers.

<i>Table E. Comparison of current and proposed fee schedules for mortgage brokerage business and mortgage brokers</i>				
	MORTGAGE BROKERAGE BUSINESS		MORTGAGE BROKER	
	Current Fee	Proposed Fee	Current Fee	Proposed Fee
Application Fee	\$350	\$425	\$200	no change

<i>Table E. Comparison of current and proposed fee schedules for mortgage brokerage business and mortgage brokers</i>				
	MORTGAGE BROKERAGE BUSINESS		MORTGAGE BROKER	
Biennial Renewal Fee	\$300	\$375	\$150	no change
Branch Office Permit Fee	\$150	\$225	N/A	N/A
Late Renewal (Reactivation) Fee	\$100	no change	\$100	no change

Table F compares the current fee schedule and proposed fee structure under this committee substitute for mortgage lenders and correspondent mortgage lenders.

<i>Table F . Comparison of current and proposed fee schedules as between mortgage lenders and correspondent mortgage lenders.</i>				
	MORTGAGE LENDER		CORRESPONDENT MORTGAGE LENDER	
	Current Fee	Proposed Fee	Current Fee	Proposed Fee
Application Fee	\$500	\$575	\$400	\$500
Biennial Renewal Fee	\$500	\$575	\$500	\$475
Branch Office Permit Fee	\$250	\$325	\$250	\$325
Reactivation Fee	\$100	no change	\$100	no change

Table G outlines the direct private sector costs statewide are outlined below.

Table G. Direct Private Sector Costs:	(FY99-00)	(FY00-01)	(FY01-02)
1. Reimbursement of DBF examination staff travel expenses for out-of-state examinations under chapter 494, F.S., estimated at \$1,000 per examination X 100 examinations.	\$100,000	\$100,000	\$100,000
2. Elimination of examination fees under chapter 494, F.S.	-0-	(\$183,500)	(\$183,500)
3. Increase in licensing fees under chapter 494, F.S.	-0-	\$450,000	-0-

### C. Government Sector Impact:

As noted above, DBF is proposing to eliminate examination fees under this committee substitute while increasing licensing fees. The fiscal impact of this committee substitute on DBF is outlined below in Table H.

Table H. Direct Public Sector Costs:	(FY99-00)	(FY00-01)	(FY01-02)
1. Recurring Effects: Reimbursement of actual travel expenses for out-of state examinations under chapter 494, F.S. (\$1,000 per examination.)	-0-	-0-	-0-
2. Loss of examination fees under chapter 494, F.S.	-0-	(\$183,500)	(\$183,500)
3. Increase in licensing fees under chapter 494, F.S.	-0-	\$450,000	-0-
4. Total Revenues and Expenditures	-0-	\$266,500	(\$183,500)

The department asserts that the additional revenues generated by this bill will be offset by the eight FTEs that are proposed in their Legislative Budget Request. However, this legislative budget request is not directly related to this bill, which generally does not increase the responsibilities or workload of the department.

#### **VI. Technical Deficiencies:**

None.

#### **VII. Related Issues:**

None.

#### **VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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