

**STORAGE NAME:** h0533a.gg

**DATE:** April 16, 1999

**HOUSE OF REPRESENTATIVES  
AS FURTHER REVISED BY THE COMMITTEE ON  
GENERAL GOVERNMENT APPROPRIATIONS  
ANALYSIS**

**BILL #:** HB 533

**RELATING TO:** Mortgage Brokers and Lenders

**SPONSOR(S):** Representative Goode

**COMPANION BILL(S):** SB 1326 (s)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) FINANCIAL SERVICES YEAS 7 NAYS 0
  - (2) BUSINESS REGULATION AND CONSUMER AFFAIRS (W/D)
  - (3) FINANCE AND TAXATION (W/D)
  - (4) GENERAL GOVERNMENT APPROPRIATIONS YEAS 11 NAYS 0
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**I. SUMMARY:**

HB 533 revises Chapter 494, F.S., in general to conform the Department of Banking and Finance's regulatory provisions for mortgage brokers with the department's regulatory provisions for other financial services industries:

**General Provisions**

The bill adds 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.

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 reports listing associates or loan originators employed by licensees between October 1, 1999 and December 31, 1999, and for quarterly reports thereafter.

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.

**Mortgage Brokerage Business and Mortgage Brokers**

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**

Provides that each mortgage lender is 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."

**Fiscal Impact:** The DBF estimates a \$0 impact for FY 1999-2000, a positive impact of \$225,000 for FY 2000-2001, and a negative impact of (\$225,000) for FY 2001-2002.

II. SUBSTANTIVE ANALYSIS:

A. 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 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 a 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;
- Violating 18 U.S.C. s. 708, 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 as between mortgage brokerage businesses and mortgage brokers.

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<sup>1</sup>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 on page 6 of this analysis.

<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.

*Table A. Comparison of license requirements and grounds for licensure denial as between mortgage brokerage business and mortgage brokers.*

	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</li> <li>completed application and \$200 fee</li> <li>a complete set of fingerprints filed 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>
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>same</li> <li>same</li> </ul>

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

*Table B. Comparison of fee schedules and the maximum period of time a license may remain inactive before expiration, as between mortgage brokerage business and mortgage brokers*

	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	Six months	Two years

Mortgage Broker Disclosure Requirements

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

<sup>6</sup>According to the DBF, “permits” and “registrations” are holdover terms from earlier versions of the mortgage statutes and are somewhat 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.

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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;
- there is no guarantee for acceptance into any loan program, or any specific loan terms or conditions;
- a good faith estimate has been made 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 seven 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., within 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, the 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

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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.

are exempt from the requirements of this part<sup>10</sup> and which entities are exempt from licensure under 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 as between a mortgage lender and a correspondent mortgage lender.

<i>Table C. Comparison of license requirements and grounds for licensure denial as between a mortgage lender and a 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>

<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 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 compares the fee schedules and the maximum period of time a license may remain inactive before expiring, as between a mortgage lender and a correspondent mortgage lender.

<i>Table D. Comparison of fee schedules and the inactive license dormancy threshold period for a mortgage lender and a correspondent mortgage lender</i>		
	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	six months	same

**B. EFFECT OF PROPOSED CHANGES:**

*General Provisions*

Clarifies the application of regulatory provisions of chapter 494, F.S., by adding definitions for certain terms that are commonly used in statute and by the industry.

Eliminates fees for examinations and authorizes the department to conduct out-of-state examinations, and consolidates examination, application, and renewal fees resulting in an increase in some application and renewal fees.

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 by the DBF.

Requires reports listing associates or loan originators employed by licensees between October 1, 1999 and December 31, 1999, and for quarterly reports thereafter.

Clarifies that any person who pays a fee or commission to an unlicensed person commits a prohibited act.

Authorizes independent contractors (licensed mortgage brokers who are neither associates of a mortgage brokerage business nor employees of a mortgage lender) to contract directly with mortgage lenders and prohibits independent contractors from contracting with more than one mortgage lender at a time.

*Mortgage Brokerage Business and Mortgage Brokers*

Clarifies disclosure requirements for written agreements.

Eliminates the requirement to physically locate a principal place of business in Florida.

Requires 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 and report any felony conviction.

*Mortgage Lenders and Correspondent Mortgage Lenders*

Provides that a plea of guilty, or a plea of nolo contendere, to a crime involving fraud, dishonest dealing, any other act of moral turpitude, or failure to timely pay any fee, charge, or fine, is grounds for disciplinary action against a mortgage lender or correspondent mortgage lender even if adjudication is withheld.

Provides that each mortgage lender is accountable for any activity of an independent contractor.

Corrects and conforms the statutory language which authorizes a mortgage lender or correspondent mortgage lender to act as mortgage broker by replacing the term "broker" with the term "brokerage business." This allows for corporate compliance since the definition for broker relates only to natural persons or individuals.

Table E compares the current and proposed fee schedules as between mortgage brokerage business and mortgage brokers.

<i>Table E. Comparison of current and proposed fee schedules as between 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
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 and proposed fee schedules as between 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

See, Part E. SECTION-BY-SECTION ANALYSIS, for more detailed explanation.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

Yes. The bill eliminates the department's authority to set fees by rule by establishing a set fee in statute, and clarifies the department's rulemaking authority to prescribe the minimum information to be maintained by licensees.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. Requires mortgage brokerage businesses to file an initial report identifying all mortgage brokers who were associates of the mortgage business between October 1, 1999 and December 31, 1999. 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.

In addition, the bill requires mortgage brokerage businesses and mortgage brokers to report pleas of nolo contendere to crimes involving fraud, dishonest dealing, or any other act of moral turpitude and report any felony conviction.

Requires mortgage lenders and correspondent mortgage lenders to file an initial report with the department identifying all loan originators who were employed by the mortgage lender or correspondent mortgage lender from October 1, 1999 to December 31, 1999. 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.

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No



- b. Does the bill require or authorize an increase in any fees?

Yes. The bill eliminates fees for examinations and authorizes the department to conduct out-of-state examinations, and consolidates examination, application, and renewal fees resulting in an increase in some application and renewal fees.

- c. Does the bill reduce total taxes, both rates and revenues?

No

- d. Does the bill reduce total fees, both rates and revenues?

No

- e. Does the bill authorize any fee or tax increase by any local government?

No

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/a

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

Yes. The bill eliminates the requirement to physically locate a principal place of business in Florida.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. The bill requires 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 17 of this bill, and report any felony conviction within 30 days after the date of conviction or plea of nolo contendere.

The bill provides 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 even if adjudication is withheld. Additionally the bill provides that failure to timely pay any fee, charge, or fine is considered grounds for disciplinary action against a mortgage lender or correspondent mortgage lender. Finally, the bill holds each mortgage lender accountable for any activity of an independent contractor undertaken in connection with a mortgage transaction of the lender.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

*Amends* s. 494.001, s. 494.0012, s. 494.00125, s. 494.0016, s. 494.0025, s. 494.0031, s. 494.0032, s. 494.0033, s. 494.00331, s. 494.0034, s. 494.0036, s. 494.0038, s. 494.0039, s. 494.004, s. 494.0041, s. 494.0061, s. 494.0062, s. 494.0064, s. 494.0066, s. 494.0067, s. 494.0072, and s. 494.0073, F.S., *creates* s. 494.00165, F.S., and *repeals* s. 494.0037, F.S.

E. SECTION-BY-SECTION ANALYSIS:

**Sections 1 through 6 amends Part I of Chapter 494 - General Provisions**

Section 1. Amends s. 494.001, F.S., adding 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," and revising the definition for "associate,"<sup>13</sup> "mortgage broker fee"<sup>14</sup> and "service a mortgage loan."

Section 2. Amends s. 494.0012, F.S., eliminating fees for examinations and authorizing the DBF to conduct out-of-state examinations at its discretion. The bill revises the authorization for the department to charge licensees per diem charges for examinations at out-of-state locations and limits examiners to 30 days per year in instances where no fraudulent conduct is revealed. The bill also consolidates examination, application, and renewal fees resulting in an increase in some application and renewal fees. (See also Sections 7, 8, 12, 18-21 of this bill for similar consolidation provisions) This section has an effective date of September 1, 2000.

Section 3. Amends s. 494.00125, F.S., correcting and conforming statutory references by deleting the term "registration" and "permit" and substituting "license" as appropriate.

Section 4. Amends s. 494.0016, F.S., clarifying the DBF's rulemaking authority to prescribe the minimum information to be maintained by licensees.

Section 5. Creates s. 494.00165, F.S., combining current provisions 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 6. 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 7 through 17 amends Part II of Chapter 494 - Mortgage Brokers**

Section 7. Amends s. 494.0031, F.S., eliminating the DBF's authority to set fees by rule and establishes a \$425 initial application fee for mortgage brokerage businesses (up from \$350) . Examination fees are eliminated in an earlier section of this bill. Technical revisions are also made to conform terms and eliminate unnecessary language. (See Section 2 of this bill).

Section 8. Amends s. 494.0032, F.S., Eliminating the DBF's authority to set fees by rule and establishes a \$375 renewal fee for mortgage brokerage businesses (up from \$300) and a \$225 fee for the renewal of each branch office license (up from \$150). Examination fees are eliminated in an earlier section of this bill. In addition, technical revisions are made to conform terms, eliminate unnecessary language and clarify existing language. (See Section 2 of this bill). Finally, the bill provides a procedure and sets the fee (\$100) for the reactivation of an inactive license.

Section 9. 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 10. 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.

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<sup>13</sup>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.

<sup>14</sup>The term "mortgage broker fee" is incorrectly used in the statute to refer to a "mortgage brokerage fee." This bill corrects this error.

Section 11. Amends s. 494.0034, F.S., eliminating the DBF's authority to set fees by rule and establishing a \$150 license renewal fee for mortgage brokers. In addition, technical revisions are made to conform terms, eliminate unnecessary language and clarify existing language.

Section 12. Amends s. 494.0036, F.S., eliminating the DBF's authority to set fees by rule and establishing a \$225 application fee for mortgage brokerage business branch offices. Examination fees are eliminated in an earlier section of this bill. In addition, technical revisions are made to conform terms, eliminate unnecessary language and clarify existing language. (See Section 2 of this bill.) New subsection (3) is language moved to this section from s. 494.0039 (3), F.S.

Section 13. 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 14. Amends s. 494.0039, F.S., eliminating the requirement to physically locate a principal place of business in Florida.

Section 15. 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 17 of this bill, and report any felony conviction within 30 days after the date of conviction or plea of nolo contendere.

Section 16. 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 October 1, 1999 and December 31, 1999. 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 17. 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 18 through 26 amends Part III of Chapter 494 - Mortgage Lenders**

Section 18. 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 bill. Technical revisions are also made to conform terms and replace unnecessary language (See Section 2 of this bill).

Section 19. 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 bill. Technical revisions are also made to conform terms and replace unnecessary language (See Section 2 of this bill).

Section 20. Amends s. 494.0064, F.S., eliminating the DBF's authority to set fees by rule and establishes a \$475 biennial renewal fee for correspondent mortgage lenders (down from \$500) and a \$575 biennial renewal fee for mortgage lenders (up from \$500). In addition, examination fees are eliminated in an earlier section of this bill. Technical revisions are also made to conform terms and replace unnecessary language (See Section 2 of this bill).

Section 21. Amends s. 494.0066, F.S., eliminating the DBF's authority to set fees by rule and establishes a \$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 bill. Technical revisions are made to conform terms, replace unnecessary language and clarify existing language (See Section 2 of this bill).

Section 22. 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 5 of this bill).

Section 23. 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 October 1, 1999 to December 31, 1999. 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 24. 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 bill 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 bill holds each mortgage lender accountable for any activity of an independent contractor undertaken in connection with a mortgage transaction of the lender.

Section 25. 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 26. Repeals s. 494.0037, F.S., in order to eliminate the unnecessary, and potentially conflicting, section.

Section 27. Provides effective dates.

**III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:**

**A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:**

1. Non-recurring Effects:

N/A

2. Recurring Effects:

	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
<b>Revenues:</b>			
Loss of examination fees under Chapter 494, F.S.(ave. '96-'98 fees collected)	\$ 0	(\$183,500)	(\$183,500)
Increase in licensing fees under Chapter 494, F.S. (6,000 licensees X \$75 increase)	<u>\$ 0</u>	<u>\$450,000</u>	<u>\$0</u>
<b>Expenses:</b>			
Expenses for new FTEs	\$ 0	(\$41,500)	(\$41,500)
<b>Total: Department Regulatory Trust Fund</b>	<b>\$ 0</b>	<b>\$225,500</b>	<b>(\$225,500)</b>

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
Department Regulatory Trust Fund	\$ 0	\$225,500	(\$225,500)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

	<u>FY 1999-00</u>	<u>FY 2000-01</u>	<u>FY 2001-02</u>
Elimination of examination fees under Chapter 494, F.S. (ave. '96-'98 fees collected)	\$ 0	\$183,500	\$183,500
Increase in licensing fees under Chapter 494, F.S.	<u>\$ 0</u>	<u>(\$450,000)</u>	<u>\$0</u>
Total Private Sector Costs	\$ 0	(\$366,500)	\$183,500 <sup>15</sup>

2. Direct Private Sector Benefits:

Licensees would no longer have to pay for DBF examinations in state as those fees, along with application and renewal fees, are consolidated. Mortgage brokers who are independent contractors would be permitted to deal directly with lenders. A corporate or partnership mortgage lender or a correspondent mortgage lender would not be prohibited from acting as a mortgage brokerage business.

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

The licensee's reimbursement to the DBF of actual travel costs for out-of-state examinations will result in a revenue neutral impact to the state.

The DBF is proposing to eliminate examination fees and increase licensing fees. The DBF claims that the net result of this change will be revenue neutral to the state because the eight FTEs that are proposed in the LBR will be performing examinations of licensees under Chapters 494, 516, and 520, F.S.

According to the DBF, it anticipates a recurring \$100,000 expense to the private sector for FY 1999-2000, and thereafter, as a result of the DBF conducting an estimated 100 out-of-state examinations at a cost of \$1,000 each. Although Chapter 494, F.S., authorizes out-of-state examinations, the DBF reports that it has not yet examined an entity out-of-state pursuant to that authority.

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<sup>15</sup>This amount represents a possible savings to the industry at large for that fiscal year.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill will not reduce the authority of municipalities and counties to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

None

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 11, the Committee on Financial Services passed a strike-everything amendment offered by the bill's sponsor, Representative Goode. In effect, the amendment:

- provides that persons within a mortgage brokerage business whose activities are primarily ministerial would not be considered to be acting as a mortgage broker;
- provides that all application, branch office and renewal fees are nonrefundable;
- authorizes the department to adopt rules permitting electronic submission of forms, documents and/or fees; and,
- provides numerous technical changes for syntax purposes.

On April 16, 1999, the Committee on General Government Appropriations adopted one technical amendment .

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Michael A. Kliner

Staff Director:

Susan L. Cutchins

AS FURTHER REVISED BY THE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS:

Prepared by:

Juliette Noble

Staff Director:

Cynthia P. Kelly