

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 1624

SPONSOR: Governmental Oversight & Productivity Committee and Banking and Insurance Committee and Senator Sebesta

SUBJECT: Banking Regulation

DATE: March 30, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Clodfelter</u>	<u>Cannon</u>	<u>CJ</u>	<u>Fav/1 amendment</u>
3.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Fav/CS</u>
4.	<u> </u>	<u> </u>	<u>FT</u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The Committee Substitute for Committee Substitute for Senate Bill 1624 amends seven chapters of the Florida Statutes: ch. 494, F.S. (regulation of mortgage brokerage and mortgage lending), ch. 516, F.S. (Florida Consumer Finance Act), ch. 517, F.S. (Florida Securities and Investor Protection Act), ch. 520, F.S. (Motor Vehicle Retail Sales Finance Act), ch. 537, F.S. (Florida Title Loan Act), ch. 560, F.S. (Money Transmitters' Code), and ch. 626, F.S. (Licensing Procedures Law for insurance representatives and operations).

The committee substitute gives the Financial Services Commission (commission) the authority to mandate the electronic filing of quarterly reports, initial applications, and renewal applications made pursuant to chs. 494, 516, 520, and 560, F.S. If electronic filing is mandated, alternate means of filing must be permitted for technological or fiscal hardships.

The committee substitute provides the Office of Financial Regulation (office) with authority to utilize a third-party for the submission of fingerprint cards and fees by electronic means as part of the licensing process under chs. 494, 517, and 560, F.S. The bill also clarifies that the Financial Services Commission (commission) has authority to charge a fee for the processing of fingerprint cards pursuant to chs. 494 and 560, F.S. The Committee Substitute for Committee Substitute for Senate Bill 1624 caps the additional authorized fee for fingerprints at \$30.

The commission is given rulemaking authority to prescribe the means by which records may be destroyed by consumer finance companies, title lenders, mortgage brokers, and mortgage lenders (under chs. 494, 516, 520, 537, and 560, F.S.) after the statutorily mandated period for retention of records expires. The commission is also given authority to mandate a longer retention time if a relevant criminal or civil statute of limitations warrants a longer retention period.

The committee substitute amends chs. 494, 516, 517, and 520, F.S., by clarifying that payment for a license or branch application approval must be received contemporaneously with the license application, and also allows the office to take disciplinary action for paying for a license with a check that fails to clear. The bill also clarifies that a financial institution may be exempt from chs. 494 and 560, F.S., only if it is regulated within the United States by a state government or the Federal Government.

The committee substitute makes changes to ch. 494, F.S. (regulations on mortgage brokerage and mortgage lending), and authorizes the Office of Financial Regulation to contract with a vendor for the administration of the required licensing test taken by mortgage broker applicants. The fees to transfer a license are increased from \$500 to \$575. Transfer applicants who file applications after October 1, 2004, must have a principal representative who has completed 24 hours of education requirements and passed a written test approved by the office. A newly designated principal representative is allotted 90 days after designation to complete his or her classroom and testing requirements under the bill. The bill also states that a permit for a mortgage broker school cannot be transferred or assigned. The bill caps the examination fee for examination pursuant to s. 494.0061, F.S., regarding primary and subordinate mortgage transactions at \$100.

Chapter 517, F.S. (Florida Securities and Investor Protection Act), is amended to provide the Financial Services Commission with rulemaking authority to establish procedures for the deposit of fees and documents with the Investment Advisor Registration Depository, as well as to require renewal registrations for branch registrations to be processed through the Central Registration Depository once its capacity is developed. The procedures for filing a claim from the Securities Guaranty fund are revised by the bill. The office may require an affidavit from a claimant setting forth their efforts to have a judgment paid by the judgment debtor as a condition of receiving compensation from the fund. Also, payments for claims from the fund are limited by the bill to \$100,000 regardless of the number of claims or claimants (previously only the number of claimants was referred to). If a claimant satisfies a judgment from another source, the claimant must reimburse the fund all amounts paid to the claimant on the claim. The Financial Services Commission is given rulemaking authority to promulgate forms for purposes of filing a claim from the fund. Also, a Canadian securities dealer doing business with a Canadian citizen in Florida concerning Canadian securities no longer must be registered with the office, but instead must meet a notice filing requirement. Exemptions from registering securities with the office for such dealers are based upon the securities dealer being compliant with the notice filing requirement, not registration.

The committee substitute eliminates requirements (submitting a list identifying authorized vendors and business locations), in the renewal process for registration to sell or issue payment instruments or act as a funds transmitter under part II of ch. 560, F.S. Written amendments must be filed when changes in registration under part II or III occur for various reasons (changes in a partnership, changes in officers, or changes in means of doing business).

Section 626.565, F.S., is created to require that insurance agents and other licensees under ch. 626, F.S., are responsible for the prudent disposition of records containing the personal financial or health information of a consumer, policyholder, applicant, or insured. Rulemaking

authority is granted to the Department of Financial Services or Financial Services Commission to govern the destruction of documents.

This bill substantially amends the following sections of the Florida Statutes: 494.0011, 494.0016, 494.0029, 494.00295, 494.003, 494.0031, 494.0033, 494.0034, 494.0036, 494.0041, 494.006, 494.0061, 494.0062, 494.0064, 494.0065, 494.0066, 494.0067, 494.0072, 494.00721, 516.03, 516.07, 516.12, 517.051, 517.061, 517.081, 517.12, 517.131, 517.141, 517.161, 520.03, 520.32, 520.52, 520.63, 520.994, 520.995, 520.997, 537.009, 560.105, 560.118, 560.114, 560.121, 560.205, 560.207, 560.210, 560.211, 560.305, 560.307, 560.308, 560.310, and creates section 626.565 of the Florida Statutes.

II. Present Situation:

The Florida Financial Services Commission (commission) consists of the Governor, the Chief Financial Officer, the Attorney General, and the Commissioner of Agriculture. The commission has rulemaking authority (as provided by statute) for the regulation of financial institutions in Florida. The Office of Financial Regulation (office) is responsible for all activities of the Financial Services Commission relating to the regulation of banks, credit unions, other financial institutions, finance companies, and the securities industry.¹

The Office of Financial Regulation licenses and regulates state chartered financial institutions in Florida. The office has regulatory authority over state-chartered commercial banks, credit unions, savings associations, non-deposit trust companies, as well as companies and individuals involved in mortgage brokering, consumer finance, securities, motor vehicle retail financing, title loans, and transmitting money. A variety of functions are performed by the office, including processing applications for new banks, acquisitions, mergers, changes of control, and applications for licensing. The office does not have regulatory authority over financial institutions that are chartered and regulated by the Federal Government.

Senate Bill 1624 amends seven chapters of the Florida Statutes, all of which govern areas of commerce over which the office has regulatory authority. Chapter 494, F.S., contains regulations on mortgage brokerage and mortgage lending including licensure requirements, provisions regarding the fees brokers can charge, and requirements for brokering loans to certain investors. 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. The chapter contains licensing requirements for lenders, provisions requiring the maintenance of records, limitations on finance charges, and provides the office with investigatory and disciplinary powers. Transactions involving securities (stocks, bonds, notes; etc.) are regulated by ch. 517, F.S., which requires the registration of securities and securities dealers, provides procedures for investigating securities violations, outlines prohibited practices, and also contains the Securities Guaranty Fund. The Securities Guaranty Fund provides compensation to persons who have suffered monetary damages due to acts committed by a dealer or investment advisor and meet the statutory requirements for compensation.

¹ Section 20.121(3), F.S.

The office also has regulatory authority over various types of retail installment sales covered by ch. 520, F.S. Chapter 520, F.S., is divided into five parts. Part I regulates motor vehicle sales financing, part II regulates retail installment sales (the purchase of retail goods via installment payments), part III requires the licensing of sales finance companies (companies that acquire home improvement contracts), part IV regulates home improvement contracts (financing for home improvement through home improvement contracts), and part V contains the regulatory powers of the office to ensure compliance with ch. 520, F.S., through investigations and disciplinary action.

Chapter 537, F.S., contains the Florida Title Loan Act and provides the office regulatory powers over loans secured by the title to a motor vehicle. The chapter contains licensing requirements for title loan dealers, regulations on engaging in business as a dealer, limits on title loan charges, the office's investigatory powers, and penalties for violating the chapter. Chapter 560, F.S., is the Money Transmitters' Code and regulates various money transmitters including payment instrument (check) sellers, foreign currency exchangers, check cashing, funds transmissions (via wire, electronic transfer, courier; 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 code gives the office supervisory powers over all money transmitters, requires registration of all money transmitters, provides requirement criteria for registration, gives the office the power to conduct investigations and impose discipline on code violators, and enumerates others conduct requirements and responsibilities placed on money transmitters. Chapter 626, F.S., contains the licensing procedures and requirements for various types of insurance agents, adjusters, and administrators, and also outlines unfair trade practices, unauthorized insurers, rules for making viatical settlements, and rules for structured settlements.

Representatives from the Office of Financial Regulation state that the office issues over 300,000 licenses each year. Proponents of the committee substitute claim that its provisions will enable the office to receive electronically filed forms and fees, and to outsource mortgage broker pre-licensing tests for the purpose of creating a more efficient licensing process. The provisions allowing for the destruction of records via rulemaking by the Financial Services Commission are said to be necessary to help prevent identity theft.

III. Effect of Proposed Changes:

Sections 1-19: Amendments to Chapter 494, F.S. (Regulations on Mortgage Brokerage and Mortgage Lending)

Section 1. Amends s. 494.0011(2), F.S., to allow the Financial Services Commission to require (previously it could only allow) mortgage brokers to electronically submit forms, documents, and fees required by ch. 494, F.S., but also mandates that the commission must reasonably accommodate technological or financial hardship when adopting rules that require the electronic submission of forms, documents, or fees. The commission is given rulemaking authority to prescribe the requirements and procedures for obtaining a technological or financial hardship exemption from rules mandating electronic submission of forms, documents, and fees. Creates s. 494.0011(6), F.S., to mandate that the grant or denial of a license under ch. 494, F.S., must be done in accordance with the provisions of s. 120.60, F.S., which contains the license application

procedures that generally apply to all state agencies in Florida. Applications currently are required to conform to s. 120.60, F.S., so the bill's effects are clarifying in nature.

Section 2. Amends s. 494.0016(4), F.S., to provide the commission with rulemaking authority to prescribe the requirements for the destruction of books, accounts, records, and documents retained by the licensee after completion of the 3-year retention period for maintaining documents relating to expenses paid by a licensee on behalf of a borrower, including each closing statement signed by a borrower. Regardless of the 3-year retention period, if the Office of Financial Regulation (office) identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of ch. 494, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

Section 3. Amends s. 494.0029, F.S., to state that permit applications for mortgage business schools are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, a non-refundable \$500 application fee as currently required, and any other fee required by law or rule. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to run. The bill also states that permits issued under s. 494.0029, F.S., are not transferable or assignable.

Section 4. Clarifies that the educational requirements in s. 494.00295, F.S., for mortgage brokers, mortgage lenders and correspondent mortgage lenders are for continuing education. Deletes associates from the educational requirements. The term "associates" is deleted from the educational requirements because associates are licensed mortgage lenders and have to comply with the continuing education requirements of mortgage lenders. Thus, the reference to associates in current law is redundant.

Section 5. Amends s. 494.003, F.S., to declare that in order to be exempt from the mortgage brokerage requirements of ss. 494.003-494.0043, F.S., 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. Clarifies that there is no licensing requirement under ss. 494.003-494.0043, F.S., 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. Foreign owned banks, bank holding companies, and their subsidiaries that are not regulated by a U.S. state or the U.S. Federal Government will no longer qualify for exemptions under the bill.

Section 6. Amends s. 494.0031, F.S., to clarify that each person who acts as a mortgage brokerage business must be licensed pursuant to this section. Authority is given to the commission or office to require each applicant for a mortgage brokerage business license to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. A license application is deemed received for purposes of s. 120.60, F.S.,

upon receipt of a completed application form as prescribed by the commission by rule, a nonrefundable \$425 application fee, and any other fee prescribed by rule or law.

Fingerprints submitted in paper form (each officer, director, and ultimate equitable owner of a 10 percent or greater interest in a mortgage brokerage business must submit fingerprints to the office) must be taken by an authorized law enforcement officer. Permission is given for the commission to prescribe by rule additional fees for processing fingerprints, rules for submitting fingerprints and fees by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing, and to contract with another state agency for fingerprint services, either directly or through a third party vendor under contract to the other state agency. The language that states the commission may charge additional processing fees for fingerprints is clarifying in nature, as such fees are currently charged pursuant to s. 215.405, F.S. The office is given authority to contract with any other state agency which provides fingerprinting services, either directly or through a third party vendor.

The section mandates that licenses as a mortgage brokerage business are not transferable or assignable. The section deletes a provision calling for the cancellation of a license due to presenting a check with insufficient funds and also deletes the reinstatement procedure for a cancellation for that reason.

Section 7. Amends s. 494.0033, F.S., to require licensure for a person who acts as an associate for a mortgage lender or correspondent mortgage lender. The purpose of the licensure requirement is to clarify that a mortgage broker can work for either a mortgage broker business or a mortgage lender or a correspondent mortgage lender and tracks the requirements of s. 494.00331, F.S. The licensure requirements are amended to allow a written test adopted by the office to be administered by a third party approved by the office. The commission may waive by rule the exam requirement for any individual who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers primary and subordinate mortgage financing transactions. Authority is given to the commission to set by rule a fee for the examination. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, a non-refundable \$200 application fee, and any other fee required by law or rule.

Requirements are provided for accepting fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee for fingerprint processing, and to contract with another state agency for fingerprint services, either directly or through a third party vendor under contract to the other state agency.

The section deletes a provision calling for the cancellation of a license due to presenting a check with insufficient funds and also deletes the reinstatement procedure for a cancellation for that reason.

Section 8. Amends s. 494.0034, F.S., to delete the requirement that an application be submitted for the renewal of a mortgage broker's license, subject to rule of the commission.

Section 9. Amends s. 494.0036, F.S., to require that the office shall issue a mortgage brokerage business branch office license to an applicant after the office determines the applicant has submitted a complete application (rather than upon receipt) and paid the license fee. Applications are deemed received for s. 120.60, F.S., purposes upon receipt of an application form that has been completed as prescribed by commission rule, the currently required non-refundable \$225 application fee, and any other fee required by law or rule.

Section 10. Amends s. 494.0041, F.S., to state that when payment by check or electronic transmission to the office for a license or permit fails to clear, it is a ground for which disciplinary action may be taken.

Section 11. Amends s. 494.006, F.S., dealing with exemptions for mortgage lenders and correspondent mortgage lenders from the requirements of ss. 494.006-494.0077, F.S. State or federal chartered banks and bank holding companies must be regulated under the laws of any state or the Federal Government to be exempted. A correspondent mortgage lender licensed under ss. 494.001-494.0077, F.S., is exempt from the licensure requirements of those sections when acting within the scope of employment within the licensee. Foreign owned banks, bank holding companies, and their subsidiaries that are not regulated by a U.S. state or the U.S. Federal Government will no longer qualify for exemptions under the bill.

Section 12. Amends s. 494.0061, F.S., to clarify that each mortgage lender must be licensed pursuant to the section. An application for a license that includes audited financial statements must be created in accordance with accounting principles generally accepted in the United States. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, the currently required non-refundable \$575 application fee, and any other fee required by law or rule. Deletes duplicative language in new subsection (4) that permits requiring applicants to provide any reasonably necessary information in making a license determination.

Requirements are provided for accepting fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing, and to contract with another state agency for fingerprint services, either directly or through a third party vendor under contract to the other state agency. The language that states the commission may charge additional processing fees for fingerprints is clarifying in nature, as such fees are currently charged pursuant to s. 215.405, F.S. The section deletes a provision calling for the cancellation of a license due to presenting a check with insufficient funds and also deletes the reinstatement procedure for a cancellation for that reason.

The commission may waive by rule the exam requirement for any individual who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers primary and subordinate mortgage financing transactions. Authority is given to the commission to set by rule a fee of no more than \$100 for the examination. Requires a lender to notify and prove to the office that any new principal representative of a lender has completed their educational and testing requirements within 90 days of their designation.

Section 13. Amends s. 494.0062, F.S., to clarify that each correspondent mortgage lender must be licensed pursuant to the section. Authority is given to the Office of Financial Regulation (office) to require each applicant for a correspondent mortgage lender's license to provide any information reasonably necessary to make a determination of the applicant's eligibility for licensure. The audited financial statements included in the initial application for a license must be prepared in accordance with accounting principles that are generally accepted in the United States. Applications are deemed received for s. 120.60, F.S., purposes upon receipt of an application form that has been completed as prescribed by commission rule, the currently existing non-refundable \$500 application fee, and any other fee required by law or rule. Deletes duplicative language in new subsection (4) that permits requiring applicants to provide any reasonably necessary information in making a license determination.

The bill provides that a fingerprint submission requirement may only be promulgated by rule. Requirements are provided for accepting fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing, and to contract with another state agency for fingerprint services, either directly or through a third party vendor under contract to the other state agency. The language that states the commission may charge additional processing fees for fingerprints is clarifying in nature, as such fees are currently charged pursuant to s. 215.405, F.S. The section deletes a provision calling for the cancellation of a license due to presenting a check with insufficient funds and also deletes the reinstatement procedure for a cancellation for that reason.

The commission may waive by rule the exam requirement for any individual who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers primary and subordinate mortgage financing transactions. Authority is given to the commission to set by rule a fee of no more than \$100 for the examination. Requires a lender to notify and prove to the office that any new principal representative of a lender has completed their educational and testing requirements within 90 days of their designation. Requires a correspondent lender to notify and prove to the office that any new principal representative of a lender has completed their educational and testing requirements within 90 days of their designation.

Section 14. Amends s. 494.0064, F.S., by deleting the inclusion of a licensee's associates in the professional education requirements for license renewal. The term "associates" is deleted from the educational requirements because associates are licensed mortgage lenders and have to comply with the continuing education requirements of mortgage lenders. Thus, the reference to associates in current law is redundant.

Section 15. Amends s. 494.0065, F.S., to require that a mortgage lender licensee must demonstrate his or her net worth in accordance with accounting principles that are generally accepted in the United States. Section 494.0065, F.S., permits persons who are registered pursuant to former s. 494.039, F.S., licensed pursuant to former s. 521.205, F.S., or acted solely as mortgage servicers on September 30, 1991, to apply for a mortgage lender's license if certain criteria are met. Applications are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, the currently existing non-refundable \$575 application fee, and any other fee required by law or rule. This

requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to run.

As of October 1, 2004, new requirements are mandated when the ultimate equitable owner of a mortgage lender applies for a one-time transfer of at least 50 percent of the ownership, control, or power to vote any class of equity securities of the mortgage lender. The requirements are to provide proof that the applicant's principal representative has completed 24 hours of instruction in primary and subordinate financing transactions and in the provisions of ch. 494, F.S., and that the principal representative must pass a written test that covers primary and subordinate mortgage financing transactions and the provisions of ch. 494, F.S. The test is to be given by the office or a third party approved by the office.

The commission may waive by rule the exam requirement for any individual who has passed a comparable test offered by a national group of state mortgage regulators or a federal governmental agency that covers primary and subordinate mortgage financing transactions. Authority is given to the commission to set by rule a fee for the examination. The non-refundable application fee is increased from \$500 to \$575. Audited financial statements submitted as part of the application must be prepared in accordance with accounting principles that are generally accepted in the United States.

Requirements are provided for accepting fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee for fingerprint processing, and to contract with another state agency for fingerprint services, either directly or through a third party vendor under contract to the other state agency.

The committee substitute mandates that each mortgage lender must designate a principal representative who exercises control over the business and maintain a form prescribed by the commission by rule that designates the principal representative. If the form is not maintained, the business is considered to be operated by each officer, director, or equitable owner of a 10 percent or greater interest in the business. Requires a correspondent lender to notify and prove to the office that any new principal representative of a lender has completed their educational and testing requirements within 90 days of their designation.

Section 16. Amends s. 494.0066, F.S., to require the office to issue a branch office license to a licensee licensed under s. 494.0065(1), F.S., or a transfer licensee upon determining the licensee has submitted a completed application form and the nonrefundable license fee.

Section 17. Amends s. 494.0067(10)(a), F.S., to clarify that the educational requirements for the principal representative and all loan originators or associates who perform services for the licensee are for continuing education.

Section 18. Amends s. 494.0072(2)(s), F.S., to state that when payment by check or electronic transmission to the office for a license or permit fails to clear, it is a violation of this chapter and disciplinary action may be taken.

Section 19. Makes technical conforming changes to s. 494.00721(2), F.S., dealing with the reauthorization of a mortgage lender or correspondent mortgage lender after remedying a failure to satisfy the net worth requirements of ss. 494.0061, 494.0062, and 494.0065, F.S.

Sections 20-22: Amendments to Chapter 516, F.S. (The Florida Consumer Finance Act)

Section 20. Amends s. 516.03, F.S. (ch. 516, F.S., deals with consumer financing), to state that an application for a license to make loans under ch. 516, F.S., are deemed received for purposes of s. 120.60, F.S., upon receipt of an application form that has been completed as prescribed by commission rule, a non-refundable \$625 application fee, and any other fee required by law or rule. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to run. The commission may require (previously it could only allow) electronic submission of any form, document, or fee required by ch. 516, F.S. The commission is given rulemaking authority to prescribe the requirements and procedures for obtaining a technological for financial hardship exemption from rules mandating electronic submission of forms, documents, and fees.

Section 21. Adds paragraph (o) to s. 516.07(1), F.S., to state that when payment by check or electronic transmission to the office for a license or permit fails to clear, it is a violation of this chapter and disciplinary action may be taken.

Section 22. Creates s. 516.12(3), F.S., to give the commission the authority to prescribe by rule the minimum information to be shown in the books, accounts, records, and documents of licensees for purposes of enabling the office to determine the licensee's compliance with ch. 516, F.S. The commission may also adopt rules governing the destruction of books, accounts, records, and documents retained by the licensee after completion of the minimum 2-year retention period specified in subsection (1). Notwithstanding the 2-year retention period, if the office identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of ch. 516, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

Sections 23-30: Amendments to Chapter 517, F.S. (The Florida Securities and Investor Protection Act)

Section 23. Amends s. 517.051(9), F.S., to require that accounting principles generally accepted in the United States be used in disclosing the issuer's financial statements when a non-profit corporation (that is exclusively religious, educational, fraternal, benevolent, charitable, or reformatory) issues a security to be exempt from the registration provisions of s. 517.07, F.S.

Section 24. Amends s. 517.061(18), F.S., to delete the requirement that securities dealers located in Canada must be registered pursuant to s. 517.12(17), F.S. Instead, if a dealer located in Canada is "in compliance with" s. 517.12(17), F.S., the dealer is exempt from the requirement of

registering securities found in s. 517.07, F.S. This eliminates the need for Canadian dealers to be registered, and instead mandates compliance with the procedures detailed in s. 517.12(17), F.S.

Section 25. Amends s. 517.081(3)(g), F.S., to clarify that when the office requires an applicant to provide financial information as part of a simplified offering circular (when seeking to register securities sold in offerings that conform to s. 3(3) of the Securities Act of 1933), the financial information must be prepared in accordance with accounting principles generally accepted in the United States.

Section 26. Amends s. 517.12, F.S., which contains the requirements for information to be included in an application to be a registered dealer, associated person or issuer of securities. Requirements are provided for accepting fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing, and to contract with another state agency for fingerprint services, either directly or through a third party vendor under contract to the other state agency. Eliminates the requirement that associated persons be assessed an additional fee if they do not meet fingerprint filing requirements, instead making the assessment optional.

The bill states that the registration of each dealer, investment adviser, and associated person expires on December 31 of the year registration became effective unless registration is renewed before that date. The registration of branch offices expires on March 31, but once the National Association of Securities Dealers develops the capacity to process branch office registration through the Central Registration Depository, the expiration date is December 31 of the year of registry unless a renewal occurs before December 31. Authority is given to the commission to establish by rule the beginning of the year in which branch renewals must be processed through the Central Registration Depository of the National Association of Securities Dealers. The commission is also given authority to establish by rule procedures for renewing branch registrations through the Central Registration Depository. The bill also provides that the applications, fees, and termination notices required by s. 517.12, F.S., may be deposited with the Investment Advisor Registration Depository of the National Association of Securities Dealers, Inc., rather than with the office.

A Canadian securities dealer doing business with a Canadian citizen in Florida concerning Canadian securities must meet a notice filing requirement with the Office of Financial Regulation. The current registration requirement for Canadian securities dealers dealing with Canadian citizens in Florida is eliminated. The notice filing consists of necessary documents required by rule by the Financial Services Commission, consent to service of process, and a \$200 filing fee.

Section 27. Amends s. 517.131(3), F.S., regarding the requirements for seeking recovery from the Securities Guaranty Fund. The office is authorized to require an affidavit from the claimant that details the reasonable searches and inquires made into determining whether the judgment debtor possesses assets that can be used to satisfy all or part of the judgment. The person claiming payment from the fund is also given permission to request the distribution of funds from the Securities Guaranty Fund if the office has waived compliance with paragraphs (a) or (b) of s. 517.131(3), F.S. Section 517.131(5), F.S., is created to give the commission rulemaking

authority to specify the procedures for complying with subsections (2), (3), and (4) of s. 517.131, F.S. (providing that a court judgment meeting certain criteria are necessary to recover from the fund, requiring that a reasonable search to secure compensation from other sources be made, and requiring written notice be given the office of a claim as soon as possible), including rules for the form of submission and guidelines on the sufficiency and content of submissions of claims and notices.

Section 28. Amends s. 517.141(2), F.S., to state that the \$100,000 limitation on payment from the Securities Guaranty Fund for a claim against any one dealer, investment adviser, or associated person is applicable regardless of the number of claims involved. Amends s. 517.141(5), F.S., to require 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. Creates s. 217.141(11), F.S., which gives the commission rulemaking authority to specify the procedures for complying with this section, including rules for the form of submission and guidelines on the sufficiency and content of submissions of claims and notices.

Section 29. Amends s. 517.161, F.S., to allow registration under s. 517.12, F.S., to be denied, revoked, restricted, or suspended if payment to the office for a license or permit fails to clear.

Sections 30-36: Amendments to Chapter 520, F.S. (The Motor Vehicle Retail Sales Finance Act)

Section 30. Amends s. 520.03(2), F.S., to state that an application for a license to engage in the business of a motor vehicle retail installment seller or operate a branch of such business is deemed received for s. 120.60, F.S., purposes upon receipt of an application form that has been completed as prescribed by commission rule, the currently existing non-refundable \$175 application fee, and any other fee required by law or rule. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to run.

Section 31. Amends s. 520.32(2), F.S., to state that an application for a license to transact the business of a retail seller engaging in retail installment transactions or operate a branch of such business, is deemed received for s. 120.60, F.S., purposes upon receipt of an application form that has been completed as prescribed by commission rule, the currently existing non-refundable \$175 application fee, and any other fee required by law or rule. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to run.

Section 32. Amends s. 520.52(2), F.S., to state that an application for a license to engage in the business of a sales finance company or operate a branch of such business, is deemed received for s. 120.60, F.S., purposes upon receipt of an application form that has been completed as prescribed by commission rule, the currently existing non-refundable \$175 application fee, and any other fee required by law or rule. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to run.

Section 33. Amends s. 520.63(2), F.S., to state that an application for a license to engage in business as a home improvement finance seller or operate a branch of such business, is deemed received for s. 120.60, F.S., purposes upon receipt of an application form that has been completed as prescribed by commission rule, the currently existing non-refundable \$175 application fee, and any other fee required by law or rule. This requirement will mandate that the application and fee must be received before the timelines for the application process contained in s. 120.60, F.S., will begin to run.

Section 34. Amends s. 520.994(5), F.S., to give the commission authority to adopt rules to require electronic submission of forms required by the chapter for the regulation of sales and finance in accordance with ch. 520, F.S. The rules must reasonably accommodate technological or financial hardship resulting from compliance. The commission is given rulemaking authority to prescribe the procedures for obtaining a technological or financial hardship exemption from the electronic submittal requirements.

Section 35. Creates s. 520.995(1)(j), F.S., to state that when payment by check or electronic transfer to the office for a license or permit fails to clear, it is a violation of this chapter and disciplinary action may be taken.

Section 36. Amends s. 520.997(4), F.S., to give the commission rulemaking authority to prescribe the minimum information to be included in records to ensure compliance with ch. 520, F.S., and includes documents in the list of items governed by the rule. The commission may also adopt rules governing the destruction of books, accounts, records, and documents retained by the licensee after completion of the minimum 2-year retention period specified in subsection (3). Notwithstanding the 2-year retention period, if the office identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of ch. 520, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

Section 37: Amendments to Chapter 537, F.S. (The Florida Title Loan Act)

Section 37. Amends s. 537.009(5), F.S., to give the commission rulemaking authority to prescribe the minimum information to be included in records to ensure compliance with ch. 537, F.S., (licensure of title loan lenders) and includes documents in the list of items governed by the rule. The commission may also adopt rules governing the destruction of books, accounts, records, and documents retained by the licensee after completion of the minimum 2-year retention period specified in subsection (3). Notwithstanding the 2-year retention period, if the office identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of ch. 537, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the

document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

Sections 38-49: Amendments to Chapter 560, F.S. (The Money Transmitters' Code)

Section 38. Creates s. 560.105(3), F.S., to give the commission authority to adopt rules to require electronic submission of forms required by the chapter for the regulation of the money transmitter industry in accordance with ch. 560, F.S. The rules must reasonably accommodate technological or financial hardship resulting from compliance. The commission is given rulemaking authority to prescribe the procedures for obtaining a technological or financial hardship exemption from the electronic submittal requirements.

Section 39. Creates s. 560.114(1)(y), F.S., which states that payment by check or electronic transfer to the office by a money transmitter for a license or permit that fails to clear is a violation of ch. 560, F.S., and constitutes grounds for the issuance of a cease and desist order, a removal order, the denial, suspension, or revocation of a license, or any other action within the office's authority under ch. 560, F.S.

Section 40. Amends s. 560.118(2)(b), F.S., to give the commission authority to adopt rules to require electronic submission of forms required in the submission of quarterly financial reports to the office. The rules must reasonably accommodate technological or financial hardship resulting from compliance. The commission is given rulemaking authority to prescribe the procedures for obtaining a technological or financial hardship exemption from the electronic submittal requirements.

Section 41. Amends s. 560.121(2), F.S., to give the commission rulemaking authority to prescribe the minimum information to be shown in the books, accounts, records, and documents of licensees for the purpose of determining compliance with ss. 560.101-560.408, F.S. (The Florida Consumer Finance Act). The amount of time records related to an examination or registration must be maintained by the office is reduced from 10 to 3 years after the examination is closed, ceases to be active, or registration ceases to be active. Records that must be maintained include examination reports, investigatory records, applications, and related information compiled by the office or photocopies of such information. The commission may also make rules governing the destruction of books, accounts, records, and documents retained by the licensee after completion of the minimum 3-year retention period specified in subsection (2). Notwithstanding the 3-year retention period, if the office identifies a statute of limitations in another civil, criminal, state, or federal law or rule that is reasonably related by subject matter to the administration of ch. 560, F.S., the commission may identify the pertinent statute of limitations by rule and may prohibit the destruction of records required to be maintained by this chapter for a period of time established by rule that is reasonably related to the statute of limitations. The commission must prescribe by rule the documents or records that are to be preserved. Rulemaking for the extension of the document retention period and the documents to be retained is not required unless a pertinent statute of limitations is identified.

Section 42. Amends s. 560.205, F.S., which prescribes the qualifications a person who applies for registration needs in order to be registered to sell or issue payment instruments or act as a funds transmitter. Subsection (1) is amended to clarify that the exemptions from the fingerprint

filing requirements only apply to publicly traded corporations “as defined by the Commission by rule,” and that subsidiaries or bank holding companies must be organized and regulated under the laws of any state or the United States in order to be exempt.

Requirements are provided for accepting fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee of no more than \$30 for fingerprint processing, and to contract with another state agency for fingerprint services, either directly or through a third party vendor under contract to the other state agency.

Subsection (2) is amended to give the commission rulemaking authority to establish procedures for depositing fees and filing documents related to an application for registration by electronic means. The application must contain all information the commission requires by rule. The requirements that the application is on a form and that information required is reasonable are deleted. Language is deleted that required a list identifying the applicant’s proposed authorized vendors in this state, and had to include the locations in this state at which the applicant and its authorized vendors proposed to conduct business. Subsection (3) is amended to require that an application from a corporation must contain all information the commission requires by rule. The requirement that the information required be reasonable is deleted. Subsection (4) is amended to require that an application from an applicant that is not a corporation must contain all information the commission requires by rule. The requirement that the information required be reasonable is deleted. Subsection (6) is created and requires the reporting of changes in registration—via written amendment—caused by changes in personnel of a partnership or in the principals, members, co-partners, officers, directors, controlling shareholders, or responsible persons of a money transmitter or by changes of any material fact or method of doing business.

Section 43. Amends s. 560.207(1), F.S., and gives the commission rulemaking authority to establish procedures for depositing fees and filing documents by electronic means for the purpose of renewing registration under this section.

Section 44. Amends s. 560.210, F.S., to require that the permissible investments mandated by the section be calculated in accordance with accounting principles generally accepted in the United States. The investments must now have an aggregate market value of not less than the aggregate face amount of all “outstanding funds transmissions and payment instruments” issued or sold by the registrant or an authorized vendor in the U.S. Previously the language read that the minimum aggregate market value could not be less than the aggregate face amount of “all funds transmitted and outstanding payment instruments.”

Section 45. Amends s. 560.211, F.S., to allow a registrant who sells or issues funds transfer or acts as a funds transmitter to notify via amendment the location of records required to be maintained by this section.

Section 46. Amends s. 560.305, F.S., to give the commission rulemaking authority to establish rules and procedures for depositing fees and filing documents related to an application for registration by electronic means. The commission is also given rulemaking authority to request information in addition to statutory requirements for contents of an application under this section.

Section 47. Amends s. 560.306, F.S. Subsection (1) is amended to clarify that the exemptions from the fingerprint filing requirements only apply to publicly traded corporations “as defined by the commission by rule,” and that subsidiaries or bank holding companies must be organized and regulated under the laws of any state or the United States in order to be exempt. Requirements are provided for accepting fingerprint submissions, and authority is given for the commission to prescribe rules for the submission and processing of fingerprints by electronic means, to prescribe an additional fee for fingerprint processing, and to contract with another state agency for fingerprint services, either directly or through a third party vendor under contract to the other state agency. The language that states the commission may charge an additional processing fee of no more than \$30 for fingerprints is clarifying in nature, as such fees are currently charged pursuant to s. 215.405, F.S.

Subsection (4), which requires a registration or renewal application to specify the applicant’s proposed principal place of business and other business locations, is amended to delete the provision that a registrant may satisfy this requirement by providing the office with a list of such locations, including all authorized vendors operating in this state, not less than annually. Subsection (6) is created and requires the reporting of changes in registration—via written amendment—caused by changes in personnel of a partnership or in the principals, members, co-partners, officers, directors, controlling shareholders, or responsible persons of a money transmitter or by changes of any material fact or method of doing business.

Section 48. Amends s. 560.308(2), F.S., to give the commission rulemaking authority to establish procedures for depositing fees and filing documents by electronic means for the purpose of renewing registration under this section.

Section 49. Amends s. 560.310(2), F.S., to allow a registrant to notify via amendment the location of records required to be maintained by this section.

Section 50: Creation of s. 626.565, F.S. (Insurance Industry Destruction of Records)

Section 50. Creates s. 626.565, F.S., to require that insurance agents and other licensees under ch. 626, F.S., are responsible for the prudent disposition of records containing the personal financial or health information of a consumer, policyholder, applicant, or insured. Rulemaking authority is provided to the Department of Financial Services or the commission to provide for the destruction of records by their insurance agents and other licensees for the purposes of protecting confidential personal financial information and avoiding identity theft.

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:

Section 15 of the bill increases the filing fee to \$575 (previously \$500) for a mortgage lender savings clause transfer under s. 494.0065, F.S. The Office of Financial Regulation estimates this will affect approximately seven filings per year.

Additional fees expected to be charged to licensees are described in the Private Sector Impact, below.

B. Private Sector Impact:

The Office of Financial Regulation (office) estimates that the mortgage broker testing provisions (sections 7, 12, 13) of the bill (if the commission promulgates a rule allowing a third party to administer the test via computer) will cost applicants a total of \$606,184 in FY 2004-05 and \$808,245 per fiscal year for 2005-06 and 2006-07. The office estimates that the cost-per-test will be approximately \$60 to \$75 if the bill passes. Currently, there is no cost to take the test as currently administered. Benefits to the private sector include more frequent testing opportunities, quicker scoring, and more test sites. The office states that it will conduct a pilot program of computer based testing within the industry before enacting a rule to abolish the current testing procedures.

If the Financial Services Commission passes a rule to establish procedures for the deposit of fees and documents with the Investment Advisor Registration Depository (IARD), there are currently 1039 state-covered advisers and 926 state-covered agents that will be impacted as the IARD requires a one-time set up charge of \$150 per firm and \$45 per agent along with annual fees of \$100 per firm and \$45 per agent. The total fiscal impact on these persons is estimated at \$197,520 in fiscal year 2004-05 and \$145,570 per year in fiscal year 2005-06 and 2006-07. Benefits of requiring IARD registration include that consumers will have information on investment advisors on the Internet, and that registration and registration updates will be easier for investment advisor firms and agents to file.

Representatives from the Office of Financial Regulation state that if the committee substitute passes, the office is likely to use an electronic fingerprint system similar to that utilized by the Department of Education (which involves a contract with Lockheed Martin) to electronically collect fingerprints from investment advisers (ch. 517, F.S.) and money transmitters (ch. 560, F.S.). Lockheed Martin takes fingerprints in each county and optically scans them into a computer, which allows the Florida Department of Law Enforcement (FDLE) and the Federal Bureau of Investigation (FBI) to more quickly process the prints. The cost of the system per registrant is \$18, which would bring the total fee cost to \$65 per person (FDLE/FBI charges \$47 to process fingerprints). There were 909 money transmitters and investment advisors in 2003, so the total additional

fiscal impact on all money transmitters and investment advisors would be \$16,362 based on '03 numbers.

The bill also gives the office authority to impose the electronic fingerprint system requirement on mortgage brokers and lenders (ch. 494, F.S., bill sections 6, 7, 12, 13, 15). This would have a much larger fiscal impact, as there were 16,083 brokers and lenders in Florida during 2003, which brings the total fiscal impact at \$18 per submission to \$289,494. The office does not currently send the prints of mortgage brokers and lenders to the FDLE (they do for investment advisors and money transmitters), thus the turnaround for background checks is quicker. Representatives from the office gave two substantive reasons why fingerprints are not sent to the FDLE: (1) The number of mortgage brokers and lenders in Florida, coupled with a fingerprint processing time of 4 weeks or more, would result in the office being backlogged with license submissions; (2) There is a low number of "hits" on background checks as currently conducted.

C. Government Sector Impact:

The Office of Financial Regulation estimates that the filing fee increase for the Mortgage Lender Savings Clause Transfer will increase revenues by \$575 per year.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Fees Set by Rule by Agency - On page 13, lines 25 and 26; on page 21, lines 8 and 9; on page 23, lines 2 and 3; on page 25, lines 5 and 6; on page 27, lines 9 and 10; on page 30, lines 8 and 9; on page 31, lines 11 and 12; on page 40, lines 18 and 19; on page 61, lines 27 and 28; and on page 68, lines 27 and 28, the bill permits the commission to set fees for processing fingerprints or for an examination by rule. Typically, statutes authorizing an agency to establish a fee limit the fee that an agency is permitted to establish, as opposed to authorizing an open-ended fee schedule. This ensures that the fee established is within the legislative intent as well as provides clear legislative authority within a legislatively-set range.

VIII. Amendments:

None.