HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1355 Mortgage Broker and Lender License Exemptions
SPONSOR(S): Richter
TIED BILLS: **IDEN./SIM. BILLS:** SB 2526

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Committee on Financial Institutions	(ref. removed)		
2)	Jobs & Entrepreneurship Council		Holt	Thorn
3)				
4)				
5)				

SUMMARY ANALYSIS

The bill provides an exemption from the mortgage broker licensure requirements found in Part II of Chapter 494, Florida Statutes, to natural persons under exclusive contract with a mortgage lender licensed under Part III of Chapter 494, F.S., provided the licensed mortgage lender meets the requirements. The bill specifies licensee requirements. The bill requires surety bonds, business plans, and national background checks.

See fiscal section for impact.

This act shall take effect July 1, 2007.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill increase the options of a natural person under exclusive contract with a mortgage lender licensed under certain circumstances by creating an exemption.

B. EFFECT OF PROPOSED CHANGES:

Section 1: The bill provides an exemption from the mortgage broker licensure requirements found in Part II of Chapter 494, Florida Statutes, to natural persons under exclusive contract with a mortgage lender licensed under Part III of Chapter 494, Florida Statutes, provided the licensed mortgage lender meets the following requirements:

1. Originates or brokers mortgage loans only with mortgage lenders affiliated with the licensee by way of ultimate common ownership.

2. Has provided the Office of Financial Regulations (Office) with evidence of an undertaking, in a form prescribed in the bill.

The licensee must execute an “undertaking of responsibility”, set forth in the statute, wherein the licensee undertakes financial responsibility for the acts of its agents and agrees to regulatory action against the lender's license if the representatives violate mortgage regulatory statutes or rules.

3. Has provided a surety bond in the amount of $5 million to guarantee the obligations under subparagraph 2.

The licensee must secure a $5 million dollar bond, which shall not operate as a limit on recovery. The Office or individuals may bring suit on the bond after securing an unpaid judgment. Written notice by certified mail is required before cancellation of the bond and for any payments made under the bond. The bond is to be maintained in the principal amount as claims may be paid out and shall remain in place for five years after the licensee ceases operation. If the Office determines that the bond is deficient, a new or supplemental bond may be required.

4. Has implemented a business plan.

The licensee must implement a business plan to provide for 1) the education of the exempted persons that is commensurate with their duties, 2) the handling of consumer complaints and 3) the supervision of the mortgage-related activities of the exempt individuals. The business plan is to be designed to prevent and detect violations of Chapter 494, Florida Statutes.

5. Has conducted a national background.

The licensee must conduct a national background check on each natural person exempted. The licensee agrees to not contract with a person that has been the subject of any action specified in s. 494.00041(2)(a), (t) or (u), Florida Statutes, without the prior written consent of the Office. These provisions relate to disciplinary guidelines for mortgage brokers.

Section 2: This act shall take effect July 1, 2007.

C. SECTION DIRECTORY:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   An annual reduction of revenue is expected. The amount is indeterminable at this time.

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None anticipated.

2. Expenditures:

   None anticipated.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Passage of the bill would result in savings in licensing fees to mortgage lenders who elect to utilize the exemption for their independent contractors ($200 mortgage broker application fee and $150 biennial mortgage broker license renewal fee times the number of individuals exempted). In addition, each mortgage broker applicant must pay a fee to take the mortgage broker examination ($43 per exam) and a fee of $23 to process fingerprint images (neither of these items are revenues to the Office). There are also costs associated with the 24-hour pre-licensure course that applicants for a mortgage license must take, and 14 hours of continuing education biennially. The savings would be offset, in part or in full, by the cost of obtaining and maintaining a $5 million surety bond. The cost of such a bond is indeterminate as it would be based on a number of factors related to the individual lender.

D. FISCAL COMMENTS:

The loss in revenues to the state would directly result in a savings to the private sector. The actual amount of the impact is indeterminable since it would be based on the number of individuals who elect to utilize the exemption.

There would be additional costs to the private sector associated with continued education and obtaining and maintaining surety bond requirements. These costs are also indeterminable.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Office notes the following technical issues. On page 1, line 20, the statutory citations should be changed from 494.001-494.0077 to 494.003 - 494.0043. The latter provisions relate to the licensure of mortgage brokers. This change will conform to HB 1355 to the SB 2526, which is correctly drafted.

On page 2, line 34, the words "of the Department of Financial Services" should be deleted. While the Office is administratively housed within the Department of Financial Services, organizationally the Office is part of the Financial Services Commission pursuant to s. 20.121(3), F.S. SB 2526 does not reference the Department of Financial Services.

D. STATEMENT OF THE SPONSOR

Under present Florida law exclusive agents of an affiliate of a federal bank or banks are misclassified as mortgage brokers even when these agents by contract can originate mortgage loans only for the affiliated federal banks. HB 1355 corrects this misclassification by exempting these exclusive agents from licensure as mortgage brokers – the same exemption enjoyed by employees of mortgage lenders who perform the same functions. Consumer protection is enhanced because the licensed sponsoring entity must agree specifically in writing to take ultimate financial responsibility for violations of the statute by its agents through an undertaking of responsibility backed by a $5 million surety bond – mortgage lenders otherwise must provide only a $10,000 surety bond. Further the sponsoring licensee will assume all responsibility for providing supervision and equivalent training of its agents. HB 1355 will increase alternative sources of loans available in Florida and will create business opportunities in underserved areas of the state.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 22, 2007, the Committee on Financial Institutions adopted two amendments that are summarized as follows:

Amendment 1: A natural person under exclusive contract with a licensed mortgage lender is exempt mortgage broker licensure requirements in Part II, Chapter 494, F.S.

Amendment 2: Technical in nature. The amendment correctly identifies the Office of Financial Regulation.

However, there was no vote take on the bill, and it was temporarily passed.