

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

---

Prepared By: The Professional Staff of the Finance and Tax Committee

---

BILL: SB 1228

INTRODUCER: Senator Fasano

SUBJECT: Mortgage Guaranty Trust Fund

DATE: March 30, 2010

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Snider</u>	<u>Burgess</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Fournier</u>	<u>McKee</u>	<u>FT</u>	<b>Favorable</b>
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	<u>WPSC</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

This bill creates the Mortgage Guaranty Trust Fund within the Office of Financial Regulation (OFR). The fund will be administered by the OFR. Funds credited to the trust fund must be used to pay claims against loan originators, mortgage brokers, and mortgage lenders pursuant to s. 494.00172, F.S. The trust fund’s assets consist of an annual fee imposed on Florida-licensed loan originators, mortgage brokers, and mortgage lenders. Any balance in the trust fund at the end of the fiscal year shall remain in the trust fund and be available for the payment of claims. The trust fund shall be terminated on July 1, 2014, pursuant to s. 19(f)(2), Article III of the Florida Constitution. Prior to its termination, the trust fund must be reviewed pursuant to s. 215.3206(1) and (2), F.S.

This bill substantially creates an undesignated section of the Florida Statutes.

**II. Present Situation:**

The Housing and Economic Recovery Act of 2008<sup>1</sup> was enacted on July 30, 2008. Title V of this act is titled the “Secure and Fair Enforcement for Mortgage Licensing Act of 2008” or “S.A.F.E. Mortgage Licensing Act of 2008” (S.A.F.E.). The intent of S.A.F.E. is to provide greater accountability and regulation of loan originators, defined to include mortgage brokers and lenders, and enhance consumer protections by:

- Providing uniform license applications and reporting requirements for state-licensed loan originators.
- Providing increased accountability and tracking of loan originators.

---

<sup>1</sup> Pub. L. 110-289, 122 Stat. 2654 (2008).

- Enhancing consumer protections and supporting anti-fraud measures.
- Establishing a means by which residential mortgage loan originators would, to the greatest extent possible, be required to act in the best interests of the consumer.
- Facilitating responsible behavior in the subprime mortgage market place and providing comprehensive training and examination requirements related to subprime mortgage lending.
- Facilitating the collection and disbursement of consumer complaints on behalf of State and Federal mortgage regulators.

S.A.F.E. requires loan originators, which include mortgage brokers and lenders, to meet minimum net worth, surety bond, or applicable guaranty fund requirements in order to establish financial responsibility for licensees. It also provides some level of compensation for consumers defrauded by mortgage brokers and mortgage lenders.

### **Florida's Mortgage Broker and Mortgage Lender Licensing Requirements**

In Florida, the Office of Financial Regulation (OFR) is responsible for regulating mortgage brokers, mortgage lenders, and other specified financial entities.<sup>2</sup> Generally, mortgage brokers and mortgage lenders must comply with federal and state laws regulating the industry, unless they are exempt from such laws. State and federally chartered depository institutions and other entities are exempt from state licensure as a mortgage broker and as a mortgage lender under ch. 494, F.S. Florida requires licensure of individual mortgage brokers, mortgage broker businesses, mortgage broker schools, and non-depository mortgage lenders. Loan originators employed by licensed lenders are exempt from individual licensure requirements.

Florida licenses three types of mortgage lender businesses: mortgage lender,<sup>3</sup> correspondent mortgage lender,<sup>4</sup> and saving clause mortgage lender.<sup>5</sup> Currently, there is no net worth or surety bond requirement for an individual mortgage broker or mortgage broker business, while licensed mortgage lenders are required to maintain a \$250,000 net worth and a \$10,000 surety bond. In 2009, the Legislature enacted and the Governor approved legislation<sup>6</sup> that brought the state into compliance with the S.A.F.E. Mortgage Licensing Act of 2008. The statutory provisions include a guaranty fund requirement to establish financial responsibility for licensees and provide some level of compensation for consumers defrauded by mortgage brokers and mortgage lenders. Effective October 1, 2010, Florida Statutes provide for a recovery fund to be paid into by the loan originators and requires a loan originator to pay into a state guaranty fund.<sup>7</sup>

---

<sup>2</sup> The OFR is organized under the Financial Services Commission. The commission is composed of the Governor and Cabinet. [Section 20.121(3), F.S.]

<sup>3</sup> A mortgage lender business closes a mortgage loan in its name or advance funds to an applicant for a mortgage and may also service mortgage loans for another without limitation and sell the loan to a non-institutional lender.

<sup>4</sup> A correspondent mortgage lender may perform the same function; however, it may only service a loan for a maximum of four months after closing.

<sup>5</sup> The saving clause mortgage lender category was created in 1991 because of statutory changes which required a mortgage lender to apply for the new mortgage lender license which required a surety bond of \$25,000 and a net worth of \$250,000. Existing mortgage broker businesses that were acting as a lender were allowed to be "grandfathered" under the old licensure requirements. They were exempt from the surety bond requirement and subject to a net worth requirement of \$25,000 rather than \$250,000.

<sup>6</sup> Chapter 2009-241, Laws of Florida.

<sup>7</sup> s. 494.00172, F.S

Commencing October 1, 2010, the OFR will begin accepting and processing loan originator license applications. Nonrefundable fees will be deposited into the fund and will accompany those applications. Expected revenues from these fees are shown in the table:

Recurring Trust Fund Revenue	FY 10-11	FY 11-12	FY 12-13
Individuals \$20 x 40,000	\$800,000	\$608,000	\$462,080
Firms \$100 x 7,000	\$700,000	\$579,000	\$480,570
<b>Total Revenues</b>	<b>\$1,500,000</b>	<b>\$1,187,000</b>	<b>\$942,650</b>

**Compensation for Consumers**

Currently, states use a surety bond, net worth requirements, or a guaranty fund (or combination thereof) to establish financial responsibility for licensees and provide some level of compensation for consumers defrauded by mortgage brokers and mortgage lenders. Senate professional staff conducted a limited review of the bonding, net worth, or guaranty fund requirements in other states and noted that the majority of the states have net worth and bonding requirements. A few states, such as California, Oklahoma, Texas, and Utah have a guaranty fund. Based on preliminary research, most states require a surety bond or fidelity bond for mortgage brokers, ranging in an amount from \$10,000 to \$500,000. S.A.F.E. requires loan originators, which include mortgage brokers and mortgage lenders, to meet minimum net worth, surety bond, or applicable guaranty fund requirements.

Prior to 1992, Florida had a guaranty fund that compensated consumers who had suffered monetary losses resulting from a violation of ch. 494, F.S. committed by a licensed entity, as adjudged by a court of competent jurisdiction in Florida. The law limited the total recovery for all persons defrauded by one licensee to \$100,000 and to \$20,000 per claimant. Revenues derived from mortgage broker and lender license and renewal fees funded the payment of claims.

As part of a sunset review of ch. 494, F.S., the Comptroller’s Mortgage Brokerage and Mortgage Lending Sunset Review Task Force reviewed the guaranty fund.<sup>8</sup> The Task Force Report noted that recovery from the prior guaranty fund took at least 2 years after the judgment. However, the average recovery time was 3 to 4 years. In almost all cases, a claimant retained an attorney. Concerning the compensation limits of the guaranty fund, the Task Force Report reported that a guaranty fund “may provide an illusory protection” since many mortgage schemes involve millions of dollars. Payouts from this fund reached almost \$4 million during the period of 1978-1993. The funding mechanism did not adequately or timely fund all approved claims, resulting in delays in compensating victims. In 1991, the Legislature abolished the fund.

<sup>8</sup> Department of Banking and Finance, December 1990. This task force was required pursuant to ch. 90-353, L.O.F. The law directed the Comptroller to create a task force to review ch. 494, F.S. and make recommendations to the Legislature.

### III. Effect of Proposed Changes:

**Section 1.** The Mortgage Guaranty Trust Fund is established for the purpose of compensating persons who have suffered monetary damages due to a violation of ch. 494, F.S. by a licensed individual or business. The fund allows for payments of up to \$50,000 per borrower, with a maximum aggregate recovery of \$250,000 against a licensee. Funding will be provided by fees paid upon initial licensure and upon annual renewal at the rate of \$20 per licensed individual or \$100 per licensed business until the Mortgage Guaranty Trust Fund balance exceeds \$5 million. At that point, those fees will be discontinued until such time as the Fund balance falls below \$1 million. When the balance falls below \$1 million, fees will be reinstated until the Fund balance again exceeds \$5 million. In accordance with Article III of the State Constitution, the trust fund shall terminate on July 1, 2014 unless reenacted by the Legislature.

**Section 2.** This bill shall take effect July 1, 2010.

### IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

Article III, s. 19(f)(1) of the State Constitution specifies that a trust fund of the State of Florida or other public body may only be created or re-created by law in a separate bill. The bill creating or re-creating the trust fund must pass with a three-fifths vote of the membership of each house of the legislature.

### V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Fees will be paid into the trust fund until the fund balance reaches \$5 million, and will cease until such time as the balance falls below \$1 million. When the balance falls below \$1 million, fees will again be instituted until the fund balance again reaches \$5 million.

Costs associated with administering the trust fund and paying claims are expected to be minimal.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

**B. Amendments:**

None.